



S.A(MD)No.910 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2024

Delivered on : 16.02.2024

CORAM:

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A(MD)No.910 of 2010

and

M.P(MD)No.4 of 2010

Sowriar(Died)

... Defendant/
Appellant/Appellant

2.Irudhayamary

3.S.Yesu

4.Jenevo

5.S.Arputhasamy

6.S.Anthonisamy

7.S.Arputhasamy

8.Praveena

9.S.Adaikkalaraja

*(P2 to P9 are brought on record as
LRS of the deceased sole petitioner
vide Court Order dated 11.09.2023
made in M.P(MD)Nos.1 to 3 of 2015)*

Vs.

1.Thomas(Died)

2.Paulraj

3.S.Marirani

4.Reetal Mary

...Plaintiffs/
Respondents/Respondents



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5.T.Ellismary
6.Gnanamani
7.A.Dayalmary

... Plaintiffs/
Respondents/Respondents

8.Selva Mary
9.Rosy Arockiasamy
10.Vela Amalorpavam
11.Sahaya Jankiresy
12.Devanesam
13.Mary Prinka
*(R8 to R13 are brought on record
as LRS of the deceased R1 vide
Court Order dated 18.11.2010 in
M.P(MD)Nos.1to3 of 2010)*

Prayer: This Second Appeal is filed under Section 100 of C.P.C., against the decree and judgment in O.S.No.96/91 dated 21.08.1998 on the file of the District Munsif, Thiruvaiyaru, as confirmed the decree and judgment, dated 22.07.1999 passed in A.S.No.62 of 1998 by the Subordinate Court of Thanjavur.

For Appellants	: Mr.P.Vinoth, for Mr.R.Subramaian
For R2,R4,R4, R10toR13	: Mr.V.Chandrasekar
For R3,R5toR8 and R11	: No appearance

JUDGMENT

The instant second appeal has been filed at the instance of the defendant.



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2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which give rise to the instant second appeal are as follows:

The suit property was originally belonged to the plaintiffs' father by virtue of the assignment order given by the Government. The plaintiffs further submitted that the plaintiffs' father permitted the defendant to reside in the suit property, as he was assisting the plaintiff's father in his agricultural avocation. It was also contended by the plaintiffs that there was an oral mortgage and that the plaintiffs' father filed a suit in O.S.No.288 of 1986 for redemption of mortgage, and that the same was dismissed as the oral mortgage is not valid in law. In the meanwhile, the plaintiffs' father died on 23.08.1990. Hence, all the legal heirs of one late Soosai has filed the instant suit for the relief of declaration and for recovery of possession.

4. The said suit was resisted by the defendant by contending that the instant suit is hit by the principles of *res judicata* as there was a



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finding against the plaintiffs' father in O.S.No.288 of 1986. The defendant further submitted that he has been in continues possession in the property for a quite long time, therefore, pleads that he perfected title by way of adverse possession. Hence, the defendant prays to dismiss the suit.

5.Before the trial Court, on the side of the plaintiffs two witnesses were examined as P.W.1 and P.W.2 and five documents were marked as Ex.A.1 to Ex.A.5. After remanding the matter, on the side of the defendant, three witnesses were examined as D.W.1 to D.W.3 and four documents were marked as Ex.B.1 to Ex.B.4.

6.The trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the suit in O.S.No.288 of 1986 cannot be a *res judicata*, as the issue decided in the former suit is altogether different from the instant suit and hence, the suit is not hit by *res judicata*. It was further held that by virtue of assignment order, dated 02.04.1961, the plaintiffs' father became the owner of the property and after the demise of the plaintiffs' father, they are entitled to



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succeed the same. Hence, the trial Court granted the decree of declaration and also for recovery of possession. Aggrieved with the same, the defendant preferred an appeal before the first appellate Court. Whereas the first appellate Court has concurred with the finding recorded by the trial Court and dismissed the first appeal. Being not satisfied with the order of the first appellate Court, the defendant is before this Court by way of this second appeal.

7.The learned counsel appearing on behalf of the appellant/defendant would vehemently contend that the very title of the plaintiffs is based upon the revenue records and that, the revenue records cannot be the document of the title. Therefore, the learned counsel for the appellant/defendant contended that unless there are other documents in addition to the revenue records, the plaintiffs' title could not be declared. It was also further contended by the learned counsel for the defendant that when the earlier suit filed by the plaintiffs' father was dismissed, the subsequent suit filed on the basis of the revenue records, will nothing, but hit by Section 11 of C.P.C. The yet another submission put forth by the learned counsel for the appellant/defendant is that admittedly the



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defendant has been in continues possession over the suit property.

Therefore, he become perfected title by way of adverse possession and hence, he prays to allow the second appeal.

8.Per contra, the learned counsel for the respondents/plaintiffs would contend that the defence of *res judicata* does not arise in the instant suit, as the previous suit in O.S.No.288 of 1986 was for the relief of redemption of mortgage that too based upon the oral mortgage. Therefore, only in that context the suit was dismissed directing the plaintiffs to seek for an appropriate remedy. Therefore, it is the submission of the learned counsel for the plaintiffs, the issue involved in the previous suit is altogether different from the issue involved in the instant suit. The learned counsel would further submit that the mere very long possession will not be sufficient to prescribe the title by way of adverse possession, unless the defendant proves uninterrupted possession to the knowledge of the real owner, and that the possession howsoever long will not confer any title by adverse possession. Hence, he pray to dismiss the second appeal.



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10.From the submissions of either side, the point to be answered is the defence of *res judicata* and adverse possession.

11.The trial Court as well as the first appellate Court have dealt the judgment and decree passed in O.S.No.288 of 1986, which has been marked as Ex.A.4. The earlier suit in O.S.No.288 of 1986 was filed for redemption of the mortgage. However, the instant suit is for declaration to declare the title of the plaintiffs and also for recovery of possession. In order to attract Section 11 of C.P.C., the issue involved in the former suit should be substantially similar to the issue involved in the latter suit qua the present suit. As rightly contended by the learned counsel for the plaintiffs, the issue involved in the previous suit is not with respect to the title of the property, but only with respect of mortgage. The trial Court as well as the first appellate Court have rightly distinguished the issue involved in both the suit qua previous suit and the instant suit have categorically found that the suit in O.S.No.288 of 1986 will not be *res*



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judicata to the instant suit. This Court could not find any acceptable logical reasoning to deviate from the said finding.

12.The next contention put-forth by the learned counsel for the defendant is that the defendant perfected title by adverse possession. In support of his contention, he has relied upon the judgment of this Court in ***Deivanai Ammal(Died) and others-Vs-Periasamy @ Sambagounder and others***, reported in ***2010-1-L.W.439***. In the instant case, according to the plaintiffs, the defendant has been in possession over the property as a mortgagee, that too based upon the oral mortgage. But, it is the case of the defendant that notwithstanding the assignment issued in favour of the plaintiffs' father, the defendant perfected title by way of adverse possession.

13.In order to prove the said adverse possession, there is a duty cast upon the defendant to plead and establish from when onwards their possession become adverse, and they must also substantiate the same through acceptable evidence. But, while seeing the pleadings, except the reference of adverse possession, this Court could not see any foundation



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for such adverse possession. Even the document filed by the defendant is not sufficient to project his case. Therefore, this Court is not in a position to accept the contention of the defendant for adverse possession.

14.The learned counsel for the defendant has also contended that by virtue of Article 65 of the Limitation Act, the suit filed by the plaintiffs for recovery of possession is barred by limitation. But, while perusing the Article 65 of the Limitation Act, 12 years period fixed from when the possession of the defendant becomes adverse to the plaintiff. As discussed herein above, the defendant's possession has not been proved to be adverse to the plaintiff. Therefore, even otherwise, the suit for recovery of possession cannot be held to be barred by limitation.

15.There was also a feeble attempt made by the learned counsel for the defendants by relying upon the judgment of the Hon'ble Supreme Court in ***P.Kishore Kumar-Vs-Vittal K.Patkar***, reported in ***2023-INSC-1009***, by contending that the revenue records is not the document of title. However, while looking at Ex.A.3, it was an assignment order given by the Government so as to vest title with the plaintiff. To put it in



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other words, it is in a way conferring title upon the plaintiffs by the Government. Therefore, Ex.A.3 cannot be equated with that of a mere revenue records. On the other hand, Ex.A.3 must be dealt like a document conferring title upon the plaintiff.

16.Thus, both the Courts below have appreciated the material on records and oral evidence more elaborately and arrived at a correct finding. The appellant/defendant has not put-forth any ground so as to interfere with the well considered finding of both the Courts below. Furthermore, from the submission of the appellant, this Court could not find the existence of any substantial question of law.

17.In the result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To

- 1.The District Munsif,
Thiruvaiyaru.
- 2.The Subordinate Court,
Thanjavur.
- 23.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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