



S.A.(MD) No.729 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2024

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A.(MD) No.729 of 2012

and

M.P.(MD) No.2 of 2012

1.V.Narayanasamy (died)

2.Selvam

3.N.Valarmathi

*(A2 and A3 have been impleaded vide
order dated 20.11.2023)*

... Appellants

vs.

1.S.Narayanasamy Asari

2.V.Chellaiah

3.The District Collector,
Collectorate,
Madurai Road,
Theni,
Theni Taluk and District.

4.The Tahsildar,
Taluk Office,
Periyakulam Road,
Theni,
Theni Taluk and District.

...Respondents



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Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.111 of 2008 on the file of the Sub Court, Theni dated 06.09.2011 confirming the judgment and decree dated 24.09.2007 passed in O.S.No.26 of 2007 on the file of the District Munsif Court, Theni.

For Appellants	: Mr.B.Rajesh Saravanan
For R1	: Mr.R.Suriya Narayanan
For R2	: Given up
For R3 & R4	: No appearance

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant herein. For ease of understanding, the parties are referred to in the same ranking as before the trial Court.

PLAINTIFF'S CASE:

2. The plaintiff had filed a suit O.S.No.26 of 2007 on the file of the District Munsif Court, Theni for declaration and consequential injunction against the defendants 1 and 2 and for mandatory injunction against the fourth defendant.

2.1. The case of the plaintiff is that his father, namely Velayutham Chettiar had purchased the property in S.No.33, measuring an extent of 1 acre and 23 cents of Anjampatti village under a registered sale deed dated



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10.01.1942. The second defendant is his brother. The property had been purchased from one Lakshmiammal. From the date of the purchase, Velayutham Chettiar was in possession and enjoyment of the same. Thereafter, on 06.03.1965, the said Velayutham Chettiar had gifted an extent of 0.80 cents to the Bhoomidaan Board and retained the southern extent of 0.43 cents. It is this 0.43 cents, which is the subject matter of the suit. On his demise, the property devolved on the plaintiff and the second defendant. Thereafter, under a family release deed, the property fell to the share of the plaintiff and the second defendant. The plaintiff and his brother, the second defendant, have not been cultivating the lands in question and they are lying fallow.

2.2. While so, the first defendant has obtained a fraudulent sale deed from the persons, who are totally unconnected with the property. The sale deed in question appears to be a fraudulent one. On the basis of this fraudulent sale, the first defendant had also obtained a patta on 20.09.1995. On the basis of this patta, which has been fraudulently obtained, the first defendant is trying to create encumbrances in respect of the property, thereby creating a multiplicity of proceedings. From 18.01.2007, the first defendant has been taking steps to encroach into the suit schedule property.



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2.3. The plaintiff would further submit that after the death of Velayutham Chettiar, the original owner, the property is now in the enjoyment of the plaintiff and the second defendant. The plaintiff had submitted a petition to the Tahsildar, Theni, on 10.09.2004 to grant the patta in his favour. Since the first defendant has created this fraudulent document, the plaintiff was left with no other alternative except to file the suit for the reliefs that has been set out herein above.

THE WRITTEN STATEMENT OF THE FIRST DEFENDANT:-

3. The first defendant has filed a written statement *inter alia* denying the contentions raised by the plaintiff. It is his contention that the purchase of an extent of 1 acre and 23 cents by the plaintiff's father, Velayutham Chettiar, was totally false and the same is a fabricated document. That apart, the first defendant had proceeded to deny the gift of 80 cents to the Bhoomidaan Board on 06.03.1965 and would go on to state that the plaintiff was never in possession and enjoyment of the suit schedule property.

3.1. On the contrary, it is the case of the first defendant that the suit property was being cultivated by one K.Subbanaidu till 1972 and thereafter, by one Bojan Chettiar and after Bojan Chettiar, the first defendant has been in



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possession and enjoyment of the property since 1980 and has been paying the kist in respect of the property. The fourth defendant/the Tahsildar had registered the patta in favour of the first defendant after perusing the documents produced by him.

3.2. The first defendant would contend that the property is the ancestral property of K.Subbanaidu and sub-division has been done as early as in 1972 itself, where S.No.33 had been sub-divided as S.No.33/2, measuring an extent of 43 cents along with the property in S.No.34, measuring an extent of 75 cents. Subbanaidu, his son and his legal representatives had sold the same to Bojan Chettiar under a sale deed dated 04.04.1972 and after the demise of Bojan Chettiar, his legal representatives had sold the property for valid consideration to the first defendant under a sale deed dated 17.11.1980. They would contend that from the date of the purchase, he has been in continuous possession and enjoyment of the property. The suit for mandatory injunction is clearly barred by limitation. In all, the defendants sought to have the suit dismissed.

TRIAL COURT:-

4. The learned District Munsif, Theni had framed the following issues:-

"1. வாதி கோரியுள்ள விளம்புகையுடன் கூடிய நிரந்தர



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உறுத்துக்கட்டளை பரிகாரம் அவருக்குக் கிடைக்கத்தக்கதா?

2. பிராது சொத்தானது கடந்த 25 வருடங்கக்கு மேலாக 1ம் பிரதிவாதியின் உரிமை மற்றும் அனுபவத்தில் இருந்து வருகிறதா?

3. வாதி கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

4. வாதி கோரியுள்ள செயலுறுத்துக்கட்டளை பரிகாரம் அவருக்கு கிடைக்கத்தக்கதா?

5. வாதி கோரியுள்ள செயலுறுத்துக்கட்டளை காலாவதியாகிவிட்டதா?

6. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?"

5. On the side of the plaintiff, he had examined himself as P.W1 and Ex.A1 to Ex.A5 were marked. On the side of the defendants, the first defendant had examined himself as D.W1 and Ex.B1 to Ex.B11 were marked. Ultimately, the learned District Munsif, Theni, has proceeded to dismiss the suit.

6. The learned Judge had proceeded to hold that the plaintiff has not proved the possession of the property. The learned Judge had held that the suit claiming the relief of mandatory injunction ought to have been filed within a period of 3 years from the date on which patta had been granted to the first defendant ie., on or before 1998, whereas the suit was filed only in the year



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2007. Therefore, the same is barred by limitation. Though the plea of the plaintiff was that only Article 65 of the Act would apply and not Article 58, the learned Judge has not addressed the said argument. He would also proceed to hold that the documents of possession have been filed by the defendants and therefore, the plaintiff is not entitled for the relief claimed by him.

APPELLATE COURT:-

7. Questioning the said judgment and decree, the plaintiff had filed A.S.No.111 of 2008 on the file of the Subordinate Court, Theni. The learned Sub Judge had also dismissed the appeal.

SECOND APPEAL:-

8. Challenging this concurrent judgment and decree, the appellant has filed this Second Appeal and the same has been admitted on the following substantial questions of law:-

"(a) Finding of the courts below that of a suit for declaration and consequential permanent injunction is not governed by Art 65 of Limitation Act is correct?

(b) is objecting issue of patta in favour of other party amounts to starting of cause of action?



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(c) *Whether the courts below can decide title merely on revenue records considering deeds?"*

SUBMISSIONS:

9. Mr.B.Rajesh Saravanan, learned counsel appearing for the appellants would address his arguments on the ground that as regards the issues involved in the above suit, it is only the provisions of Article 65 that would be applicable and therefore, the observation of the Courts below that it is Article 58 which would apply and therefore, the suit filed beyond the period of 3 years is barred by limitation is absolutely erroneous.

10. The learned counsel for the appellants would submit that Article 65 contemplates two kinds of suit on property., a) Where possession of the property sought? or b) Where interest in an immovable property based on title is the subject matter?

11. He would rely upon the judgment of the Hon'ble Supreme Court reported in **1960 AIR (SC) 335 (Rukhmabai Vs. Lala Laxminarayan and others)** and would rely upon para 33 of the said judgment to buttress his argument that the right to sue would occur only when the defendants have clearly and unequivocally threatened to infringe the right asserted by the



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plaintiff in the suit.

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12. He would submit that in the instant case, the overt act had taken place only on 18.01.2007 and within a month thereof, the suit had been filed and therefore, the filing of the suit was well within time. He would also rely upon the judgment of this Court reported in **1998 (1) CTC 529 (Kalavathi Vs. Chitra)**, where the learned Judge, who thereafter became the Chief Justice of India, had stated that the claim in respect of the immovable properties is governed by Article 65 and therefore, the limitation is 12 years. He would therefore submit that viewed from the above judgments, the suit filed by the plaintiff is well within time and the findings of the Courts below that the suit is barred is without any legal basis.

13. Further, he would submit that the property in question continues to remain fallow and vacant and the revenue records produced by the defendants would in no way show that it relates to the suit schedule property and considering the fact that it is the vacant site, the possession follows title and admittedly, it is only the plaintiff, who has produced the documents of title and therefore, he should be entitled to the decree for injunction as well.



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14. *Per contra*, Mr.R.Suriya Narayanana, learned counsel for the first respondent would submit that the plaintiff, who had filed a suit for declaration of title and consequential injunction, is bound to prove his title as also his continuous enjoyment of the suit property in order to claim title to the same. The learned counsel would submit that the plaintiff cannot rely upon the weakness of the defense. He would submit that there has been no documents on the side of the plaintiff to show that he is in possession and enjoyment of the suit schedule property. He would submit that the documents, Ex.B2 and Ex.B3, are the registered documents and therefore, there is a presumption of notice to all the parties concerned. He would submit that the Courts below have rightly dismissed the claim of the petition.

15. Heard the learned counsel on either side and perused the documents.

DISCUSSION:-

16. The suit revolves around the issue as to the Article that would be applicable to the case on hand. In order to elaborate on the above, it would be useful to extract the provisions of Article 58, which deals with the right to sue in respect of declaration relating to matters not coming under Articles 56 and 57. Article 58.2 of the Act reads as follows:-



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<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>To obtain any other declaration</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>

17. Article 65 on the other hand would read as follows:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>For possession of immovable property or any interest therein based on title.</i>	<i>Twelve years</i>	<i>When the possession of the defendant becomes adverse to the plaintiff.</i>
<i>Explanation.-- For the purposes of this article --</i> <i>(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</i> <i>(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</i> <i>(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</i>		

18. The judgment reported in *1998 (1) CTC 529* (referred supra) was a



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case, where a suit for bare injunction was filed in the year 1990 and in the year 1996 in the written statement, the defendants had rejected the claim made by the plaintiff. Therefore, an amendment petition was filed on 20.12.1966. The said petition was allowed and the same was challenged in Revision before this Court. The learned Judge while considering the facts on hand had held that the suit claim was in respect of immovable property as per Article 65 of the Act, where the period of limitation was 12 years. Therefore, the dismissal of the amendment petition by the trial Court was totally erroneous. The facts therein would apply to the case on hand.

19. The next question that would arise is when the right to sue would occur? According to the defendants, the right to sue had occurred when the patta had been granted in favour of the defendants in the year 1995 and therefore, the suit ought to have been filed within a period of 3 years from then and the suit filed in the year 2007 is clearly barred.

20. The Hon'ble Supreme Court in the judgment in *Rukhmabai (supra)*, relied upon by the learned counsel for the appellants, was dealing with the case under Article 120 of the Act, which is equivalent to Article 58 of the present Act, where the period of limitation was then 6 years. In the case before the



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Hon'ble Supreme Court, it was contended that the plaintiff had knowledge of the fraudulent character of the Trust as early as in the year 1917 or atleast during the pendency of the partition suit in the year 1929, but however the suit had been filed only in the year 1960. After discussing what was a right to sue, the Hon'ble Supreme Court had held as under:-

"33. The legal position may be briefly stated thus: The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

21. In the case on hand, the plaintiff has clearly contended that the attempts to enter into the vacant site were taken on 18.01.2007. The suit has been filed in the year 2007 itself. Further, the property in question is a vacant site. Therefore, taking into account the above, the substantial question of law (a) is answered in favour of the plaintiff.



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22. The plaintiff would trace title to a sale deed dated 10.01.1942 under which Velayutham Chettiar had purchased the property followed by a settlement deed of the year 1965, in and by which from out of an extent of 1 acre and 23 cents in S.No.33, an extent of 0.80 cents had been gifted to the Boomidhan Board.

23. A perusal of Ex.A2 would clearly show that the southern boundary has been described as the lands retained by the donor, namely Velayutham Chettiar. The defendants on the other hand has filed the sale deed of the year 1972 followed by Ex.B3 dated 17.11.1980. These documents are subsequent to the documents, Ex.A1 and Ex.A2 that has been filed on the side of the plaintiff.

24. In Ex.B2, which is the sale deed executed by Subbanaidu and his son in favour of Bogan Chettiar, it is clearly stated that the northern boundary has been mentioned as the property belonging to Bhoomidaan Board, which is the property that has been gifted by the petitioner's father under Ex.A2. A perusal of Ex.A1 would clearly show that the petitioner's father had purchased an extent of 1 acre and 23 cents in S.No.33. Therefore, the documents and title produced by the plaintiff is much earlier point in time.



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25. The plaintiff has clearly pleaded the cause of action for instituting the suit on 18.01.2007 being the date on which the defendants had attempted to interfere with the possession. Therefore, the cause of action of the suit is not on the basis of grant of patta in favour of the plaintiff. Be that as it may, going by the judgment of the Hon'ble Supreme Court in *Rukhmabai's case (referred supra)*, the objection to the grant of patta would not constitute the starting point of cause of action since to seek declaration and injunction, there has to be an overt act of interfering with the possession, which in the instant case has been pleaded to be on 18.01.2007. Going by the pleadings, the defendants had not contradicted the above statement and further they have not been able to provide any contra evidence in this regard. Therefore, the question of law (b) is also answered in favour the plaintiff.

26. As regards the third substantial question of law, where the documents of title have been produced, which proves the title to the property, the revenue records, which are simultaneous in point in time need not be considered for deciding the title. Therefore, the question of law (c) is answered in favour of the plaintiff.



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27. In the result, this Second Appeal stands allowed. The judgment and decree in A.S.No.111 of 2008 on the file of the Sub Court, Theni dated 06.09.2011 confirming the judgment and decree dated 24.09.2007 passed in O.S.No.26 of 2007 on the file of the District Munsif Court, Theni is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes/ No

20.09.2024

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To

- 1.The Sub Judge,
Theni.
- 2.The District Munsif,
Theni.
- 3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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