



S.A.(MD).No.99 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.99 of 2013

and

M.P.(MD)No.1 of 2013

- 1.Sabura Bibi
- 2.M.S.Abu Bucker (Died)
- 3.Mohammed Ibrahim
- 4.Mohammed Rafiq
- 5.A.Mohammed Abudahir
- 6.K.Abeethe Begum
- 7.M.Amrin Banu

... Appellants

(Appellants 3 to 7 are brought on record as Lrs of the deceased 2nd appellant, vide Court order, dated 03.04.2018, made in CMP(MD)No.3091 of 2018 in SA(MD)No.99 of 2013)

/Vs./

- 1.T.Srinivasan
- 2.S.Rajagopalan
- 3.Radhika Raghunathan
- 4.Rajkumar
- 5.Zarina Begum
- 6.Zakir Hussain
- 7.S.Kader alias Babu

...Respondents

(No reliefs sought against respondents 4 to 7 and hence notice is not necessary)



S.A.(MD).No.99 of 2013

WEB 6071

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 21.08.2012, made in A.S.No.89 of 2010 on the file of the Principal District Court, Tiruchirapalli, confirming the Judgment and Decree, dated 19.01.2010, made in O.S.No.763 of 2002 on the file of the Principal Sub Court, Tiruchirapalli.

For Appellants	: Mr.R.Devaraj
R1	: Died
For R2 and R3	: Mr.K.S.Vamsidhar
R4 to R7	: Notice dispensed with

JUDGMENT

The present second appeal is preferred by the defendants 1 and 2 in the suit against the Judgment and Decree dated 21.08.2012 passed in A.S.No.89 of 2010 on the file of the Principal District Court, Tiruchirapalli, confirming the Judgment and Decree dated 19.01.2010 passed in O.S.No.763 of 2002 on the file of the Principal Sub Court, Tiruchirapalli.

2. The plaintiffs 1 to 3 in the suit are the respondents 1 to 3 herein, the defendants 1 and 2 in the suit are the appellants herein and the 3 to 6 are the respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.



S.A.(MD).No.99 of 2013

WEB COPY

3. The suit is filed by the plaintiffs 1 to 3 / respondent 1 to 3 herein for declaration and recovery of possession and to pay damages at Rs.1,000/- per month, for enjoyment of the suit property till they deliver the vacant possession.

4. The brief facts of the case as stated in the plaint is that along with the adjacent lands, the land in S.No.201/1, admeasuring 5 acres 09 cents of which the suit property forms part originally belongs to one Raja Periyaswamy and his three brothers, namely Ramamoorthy, Chinnu Pillai, Rangarajan. The said four persons laid out the larger extent and adjacent lands into house sites and sold one of the plots in the layout which is the suit property to one Vishwanathan under a sale deed dated 14.11.1965. The said Vishwanathan had sold the suit property to Sulochana Srinivasan, wife of the first plaintiff and mother of the second and third plaintiffs under sale dated 13.03.1974. After purchase the said Sulochana had erected titled shed in the suit property and was in possession and enjoyment of the suit property till her death. After her demise on 02.05.1991, the suit property devolves on her legal heirs / plaintiffs and they are in possession and enjoyment of the suit property. Thereafter a rectification deed dated 15.02.1977 was executed by the said Raja Periyaswamy and his brothers to the said Vishwanathan thereby



S.A.(MD).No.99 of 2013

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the mistake in as S.No.202 was rectified and correct S.No.201/1 was stated in the deed. While the plaintiffs were in possession but taking advantage of the fact that the second plaintiff had shifted to Chennai, the first and second defendant attempted to pass into the suit property. It is pertinent to state that the 2nd plaintiff was taking care of the suit property, but due to his employment he had to shift his residence to Chennai, however paying brief visits to the first plaintiff who was residing in Srirangam. The second plaintiff thereafter filed a suit in O.S.No. 1199/1997 on the file of District Court, Tiruchirapalli against the defendants 1 and 2 for injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and an interim injunction was granted on 14.10.1997 and the same is still in force. The plaintiffs subsequently moved to Chennai permanently. The 1st defendant suppressing the injunction order, had filed a suit in O.S.No.1453/1997 on the file of District Court, Tiruchirapalli against the 2nd plaintiff and obtained an injunction order on 06.01.1998 restraining the second plaintiff from interfering in the peaceful possession. In the suit filed by the 1st defendant wherein the 1st defendant alleges that the property originally belong to the 3rd defendant and recognising the possession Revenue Patta was granted to him, subsequently he was granted Manavari Thoraya Patta by the



S.A.(MD).No.99 of 2013

WEB ROOM

Special Tahsildar, then the 3rd defendant sold the property to the 4th and 5th defendant and then the 4th and 5th defendant had sold the suit property to the 1st defendant. The 1st defendant is the wife of the 2nd defendant. The 1st defendant title to the suit property under a sale deed executed by the 2nd defendant as power agent of the 4th and 5th defendant who are third parties to the suit, the 4th and 5th defendant in turn claim to have purchased the suit property from 3rd defendant. Neither the 3rd defendant nor the 4th and 5th defendants had any right, title or interest over the suit property. Hence they could not have conveyed the suit property to the 1st and 2nd defendant. This plaintiff are entitled to ignore the said documents, however the said person are impleaded for binding adjudication.

5. At the time when the first defendant had filed O.S.No.1453 of 1997, the plaintiff was under the impression that the first defendant had claimed title to the suit property under some mistaken impression, but the defendants subsequent activities made the plaintiffs understand that all the defendants have colluded together to grab the suit property. Further the first defendant is none other than the wife of the second defendant and the second defendant as power agent of Zarina Begum and Zakir Hussain had conveyed this suit property to his wife, the first



S.A.(MD).No.99 of 2013

WEB ROOM

defendant. This would reveal the collusive nature of the documents and that the documents have been created by the defendant 1 to 5 purely to grab the suit property. Taking advantage of the order of injunction and the fact that the plaintiffs had moved to Chennai permanently, the first and second defendant in the middle of 1998 have trespassed into the suit property and the 1st and 2nd defendants are now in possession and enjoyment of the suit property. Since the defendants 1 to 5 have created documents to defeat the rights of the plaintiffs to the suit property, further the 1st and 2nd defendants have denied the title of the plaintiffs in the written statement filed by them in O.S.No.1199 of 1997, the plaintiffs are praying declaration of the title. Further the 1st and 2nd defendants have inducted the 6th defendant as a tenant in the suit property and he is running a motor rewinding shop in the shed in the suit property. Hence the 6th defendant is impleaded as a party to the suit for binding adjudication and he has no right to continue the suit property and is bound to deliver possession to the plaintiffs. Hence the suit for declaration, recover of possession and damages for using the suit property.

6. The 1st defendant had filed written statement wherein she had denied all



S.A.(MD).No.99 of 2013

the allegations stated in the plaint, especially denied the layout of Raja Periyasamy and three brothers, denied the S.No.201/1 and the rectification deed. Further stated that there has not been any need for the defendant to trespass into the suit property, since she alone has been in possession and not the plaintiffs. The reasoning given in the plaint for the alleged attempt of trespass is untrue and imaginary. The allegation that order of injunction are in force granted in O.S.No. 1199 of 1997 is incorrect, since the said suit was dismissed for default, hence the interim injunction is not in force. The allegations against the defendant for filing O.S.No.1453 of 97 are untenable since the plaintiffs who have no interest or title in the respect of S.F.No.201/1, filed a suit suppressing true facts against the defendant who alone is the owner and attempted to interfere with her possession, which necessitated to file the suit. Admittedly, the above suit is pending, hence the present suit is unnecessary. The allegation and the comment made on the claim made by the defendant in the above suit are irrelevant in view of the fact that the suit commenced upon is pending. Further submitted that the contentions raised by the different as plaintiff in O.S.No.1453 of 1997 may be treated as part and parcel of this written statement. On the other hand, the true facts are suppressed and twisted has been made in the plaint. The suit property is situated in old S.F.No.



S.A.(MD).No.99 of 2013

WEB 201/1

and new S.No.242/6. Originally the suit property belongs to one Rajkumar son of SriRamulu of Ariyamangalam and he was in possession of the suit property and recognising the same patta was granted to him. After the advent of the enactment granting patta for house sites, the Special Tahsildar Natham had granted patta to the said Rajkumar and he alone was in possession and enjoyment of the suit property. The above Rajkumar sold the suit property in favour of Zarina Begum and her brother Zakir Hussian on 27.10.1993 and they were in possession of the property and patta was granted by the government, consequently they were paying revenue kist in respect of the suit property. Thereafter the said Zarina Begum and her brother Zakir Hussian had sold the suit property to the 1st defendant on 07.05.1997 by executing a registered sale deed through their power agent for valuable consideration, thereafter the defendant was in possession and enjoyment of the property and patta was granted under the provisions of Tamil Nadu Patta and Passbook Act 1983. After purchase and taking possession, the defendant had put up a small tiled roof construction in the suit property. The building put up by the defendant has been assessed to property tax by Tiruchirapalli City Corporation, Ariyamangalam Zone and the defendant has been paying the property tax after putting up the building and paying property tax. The



S.A.(MD).No.99 of 2013

WEB ROOM

defendant had obtained Electricity Service in Consumer Connection No.1418. The suit property as stated supra is situated in old S.No.201/1 and the new S.No.242/6 in Rajappa Nagar, BHEL Nagar and the 1st defendant alone is paying the electricity consumption charges. From the above fact it is clear the plaintiffs or their predecessors-in-title or interest namely Sulochana have no right, title or interest in respect of the suit property and since the defendants are in possession there is no question of paying damages. The claim of the plaintiff is barred by limitation. At any rate the 1st defendant and before her, her predecessors in title have been in open, exclusive, continuous possession and enjoyment of the suit property to the knowledge of the plaintiffs and her predecessors-in-title at any rate from and before 1989, openly exclusively and adversely to the knowledge of one and all, including the plaintiffs and due to such have prescribed title by adverse possession as well. Hence the claim of the plaintiffs has been extinguished. The defendants 2 to 6 are unnecessary parties and the suit is bad for misjoinder of parties and prayed to dismiss the suit.

7. The Trial Court after considering the above pleadings and after perusing the documents of the plaintiffs marked as Ex.A1 to Ex.A13 and witness PW1 and



S.A.(MD).No.99 of 2013

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PW2 and documents of the defendants marked as Ex.B1 to B10 and witness DW1 had allowed the suit. Aggrieved over the same, the defendants 1 and 2 had preferred First Appeal and the same was dismissed. Aggrieved over the same the present Second Appeal is preferred by the defendants 1 and 2.

8. The present second appeal is preferred by the defendants 1 and 2 raising the following substantial questions of law:

“A. Whether the suit filed by the respondents 1 to 3 is barred by limitation?

B. Whether the suit filed by the respondents 1 to 3 is hit by Order 2 Rule 2 of C.P.C.?

C. Whether the Courts below are correct in not appreciating the provisions of section 110 of the Evidence Act in its proper perspective?

D. Whether the courts below are correct in decreeing the suit only based on Ex.A3 Rectification Deed?

E. Whether the courts below are correct in not considering the earlier proceedings between the respondents 1 to 3 and the appellants and whether the findings of the courts below contrary to the facts and circumstances are perverse?



S.A.(MD).No.99 of 2013

WEB COPY

F. Whether the findings of the Courts below contrary to the admission made by the PW1/second plaintiff are perverse?

9. The plaintiffs had filed a suit in O.S.No.1199 of 1997 and obtained interim injunction and the defendants had filed written statement wherein the defendants herein had denied the title of the plaintiffs. In the meanwhile, the defendants had filed O.S.No.1453 of 1997 and obtained interim injunction and the same is pending as on the date of filing the written statement in the present suit in O.S.No.763 of 2002. After filing of written statement in the earlier suit in O.S.No. 1199 of 1997 the plaintiff came to know that the defendants are denying the title. Further the defendants had filed another suit in O.S.No.1453 of 1997 and in this suit also the defendants had denied the title of the plaintiffs. And also denied the title through various acts of the defendants. Thereafter the plaintiffs had filed the present suit in O.S.No.763 of 2002 on 10.07.2002 for declaration and recovery of possession. The period of limitation for immovable property and recovery of possession is twelve years. The fact of denial of title came to the plaintiff's knowledge after filing of written statement in O.S.No.1199 of 1997, then



S.A.(MD).No.99 of 2013

WEB 6084

approximately the plaintiff's knowledge is from the year 1997 or 1998. The twelve years period available is until 2009 or 2010. The plaintiff had filed the suit in the year 2002, hence this Court is of the considered opinion that the suit is filed within the period of limitation. The 1st substantial question of law is answered in favour of the plaintiffs/respondents and against the defendants/appellants.

10. The plaintiff had filed the earlier suit in O.S.No.1199 of 1997 for bare injunction when the defendants attempted to trespass in the suit property. Thereafter it came to the knowledge of the plaintiffs that the defendants are denying the title of the plaintiffs and proceeded to put up construction, hence the plaintiffs had filed the suit for declaration and recovery of possession. After filing the present suit, the earlier suit was left for dismiss for default. It is seen that the plaintiffs had filed the suit in O.S.No.1199 of 1997 and obtained interim injunction in I.A.No.1151 of 1997. The defendants herein had filed suit in O.S.No. 1453 of 1997, without disclosing the earlier suit in O.S.No.1199 of 1997 and obtained interim injunction in I.A.990 of 1997. Even though the defendants herein had stated that the O.S.No.1199 of 1997 was dismissed for default, the defendants had not produced the judgement and decree, hence it could not be ascertained



S.A.(MD).No.99 of 2013

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whether the suit was dismissed for default under Order 9 Rule 3 or Order 9 Rule 8. Further the status of the suit in O.S.No.1453 of 1997 was not clear, even though in the written statement it is mentioned that the said suit is pending, but the defendants failed to state the status of the suit thereafter. Therefore, this Court is of the considered opinion that it ought to be taken both the suits were dismissed for non-prosecution under Order 9 Rule 3. After filing of the written statement only the plaintiff came to know that the defendant is denying the title, hence the present suit not hit by Order 2 Rule 2 of C.P.C. The 2nd substantial question of law is answered in favour of the plaintiffs and against the defendants.

11. The next substantial question of law is whether the Courts below are correct in not appreciating the provisions of Section 110 of the Evidence Act in its proper perspective. The said provision is extracted hereunder:

“110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.”



S.A.(MD).No.99 of 2013

WEB COPY

The contention of the defendants 1 and 2 is that the suit property is natham property and manaivari thoraya patta was issued by the revenue officials and the same is in the name of previous vendor and they were in possession. Thereafter, the vendor had sold the property to the defendants 1 and 2 through sale deed, dated 27.10.1993, hence the defendants 1 and 2 are in possession and enjoyment of the suit property. The claim of the defendants is that when they are in possession of the property, then the burden is on the plaintiff to prove that the defendants are not owner as per section 110 of Indian Evidence Act, but the plaintiff failed to prove the same.

12. It is seen that the plaintiff had admitted the fact that the defendant is in possession of the suit property and one of the prayers is recovery of possession. Therefore, the burden of proof is on the plaintiff to prove that the defendant is not the owner. Now the question arises whether the plaintiff has proved the same. The plaintiff had traced the title of his previous vendor, wherein the vendor Raja Periyasamy and his three brothers were having patta in their name. The Head Quarters Deputy Tahsildar was examined as PW2 and through him Ex.X1 to Ex.X3 were marked which are adangal extracts. The Ex.X1 is the adangal extract



S.A.(MD).No.99 of 2013

for fasali 1378 English calendar year 1967-68 and the Ex.X2 is the adangal extract for fasali 1385 English calendar year 1975-76, wherein it is shown that S.No.201/1 is vacant site and Raja Periyasamy and others are shown as pattadars. As per Ex.X3 adangal extract S.F.No.202 has been shown as Cinema Theatre and the name of the pattadar is shown as Raja Periyasamy. Further the PW2 had specifically deposed that S.F.No.201/1 and 202 are not classified as natham properties. Therefore, the very contention of the defendants 1 and 2 that the suit property is natham is not supported by the disposition PW2 Tahsildar who had clearly deposed that the Survey Nos.201/1 and 202 are nanja lands and they are not natham poramboke. And the adangal extract for pasali 1378, 1385, 1389 were also produced to show that it is a nanja land which is standing in the name of Raja Periyasamy and others. The Appellate Court had rendered a specific finding that the defendants/appellants had not cross examined the PW2 in respect of grant of natham patta in favour of Rajkumar and Zarina Begum and Zahir Hussain. When the suit property is not a natham, then the alleged patta in the name of defendants' vendor namely Rajakumar is false and if issued it is illegal. Therefore, this Court is of the considered opinion through the said PW2, the plaintiff had proved that the defendant may be in possession but he is not the owner of the property, thus



S.A.(MD).No.99 of 2013

the burden as per section 110 of Evidence Act is discharged. Hence the 3rd substantial question of law is held in favour of the plaintiffs and against defendants.

13. The next substantial question of law is whether the courts below are correct in decreeing the suit only based on Ex.A3 Rectification Deed. In the original sale deed, the suit property's survey number is mentioned as S.No.202 and in the rectification deed it is mentioned as 201/1. As held supra the Courts below had relied on the revenue records and the deposition of the Tahsildar to come to the conclusion that the land is nanja land and not natham land. Therefore, this Court is of the considered opinion that the Courts below had not decreed the suit based on the rectification deed alone and the 4th substantial question of law is held in favour of the plaintiffs and against the defendants.

14. Infact the Courts below had clearly held both the S.No.201/1 and S.No. 202 are not natham land but nanja land. Hence the 4th substantial question of law has no relevancy at all.



S.A.(MD).No.99 of 2013

WEB COPY

15. The 5th substantial question of law is that the Courts below had failed to consider the earlier proceedings between the parties hence, the findings of the courts below are perverse. In the earlier two suits, one filed by the plaintiffs wherein there is interim injunction against the defendants herein and in the other suit filed by the defendants where there is interim injunction against the plaintiffs herein, both the plaintiffs and the defendants had not clearly stated whether the defendants appeared and the suit was dismissed denying their claim or admitting the plea of the defendants. Further this fact was not pleaded, not raised as an issue and also not proved before the Trial Court. Therefore, this Court is of the considered opinion that at this stage the claim of the defendants cannot be considered. Further as held supra the patta issued in the name of defendants vendor namely Rajkumar is false, consequently the claim of the defendants also cannot be considered.

16. The 6th substantial question of law is that the findings of the Courts below are perverse since the same is contrary to the admission of PW1. As held supra the plaintiff had proved that the land belongs to the plaintiffs through documents. Hence the admission of PW1 may not be relevant. Even if there is



S.A.(MD).No.99 of 2013

admission and if it is against the documentary evidence then the same ought to be ignored. Hence, there is no perversity in the judgments of court below.

17. Therefore, this Court is of the considered opinion that legally sustainable grounds are not raised in the second appeal and hence, this Court is inclined to dismiss the second appeal. Accordingly dismissed.

18. The Learned Counsel appearing for the defendants submitted that the defendants had constructed three shops in the suit property, which is their livelihood, wherein the defendants are in occupation in one shop and two shops are let out for lease and the lessees are occupying the shops. The construction was put up by the defendants and hence the defendants are praying to pay compensation for the said construction. Hence the compensation is fixed as Rs. 7,50,000/-. The defendants are directed to vacate the premises on or before 15.03.2025 and on the day of vacating the premises the plaintiffs are directed to pay Rs.7,50,000/- to defendants 1 and 2.

19. The learned Counsel appearing for the respondents 1 to 3 submitted that



S.A.(MD).No.99 of 2013

the 1st respondent died on 28.08.2019 and his legal representatives are his son S.Rajagopalan and daughter Radhika Raghunathan. Both the legal representatives are shown as respondents 2 and 3 herein and the said memo is recorded.

20. With the above said observations, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Principal District Court, Tiruchirapalli.

2. Principal Sub Court, Tiruchirapalli.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.99 of 2013

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.99 of 2013

Dated:
28.11.2024