



S.A(MD)No.86 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.86 of 2006

Anthonyammal

... Plaintiff/1st Respondent
Appellant

Vs.

1.Punniyalan

2.The State of Tamil Nadu,
Represented by District Collector,
Kanyakumari District, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

3.The Tahsildar,
Thovalai Taluk, Boothapandy,
Boothapandy Village,
Kanyakumari District.

4.Paul Raj

5.Jesuraj

6.Xavier Raj

7.Leo Raj

8.Amal Raj



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9.Michael Ammal

10.Vasantha

11.Saroja

12.Jaya

... Defendants/Appellants
Respondents 2 to 12

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.139 of 2003 on the file of the II Additional Subordinate Judge, Nagercoil, dated 27.10.2005 reversing the judgment and decree passed in O.S.No. 651 of 1997 on the file of the Principal District Munsif Court, Nagercoil, dated 17.09.2003.

For Appellant : Mr.V.M.Balamohan Thampi

For R-1 : No appearance

For R-2 & R-3 : Mr.S.R.A.Ramachandran
Additional Government Pleader

R-4 to R-12 : *Ex parte*

JUDGMENT

The plaintiff in the suit is the appellant herein.

2. The suit is for declaration of title and recovery of possession.

The suit was decreed by the Trial Court. On appeal filed by the first defendant in the suit, the First Appellate Court reversed the findings of



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the Trial Court and allowed the same. Aggrieved by the same, the plaintiff is before this Court.

3. According to the plaintiff, the suit property comprised in Old S.No.303 B and R.S.No.411/9 with an extent of 1.25 cents with a tiled building thereon belonged to one Chinnan and Savarimuthu. They borrowed money from Meyyal, daughter of Alangaram. Meyyal filed a suit for recovery of the amount against Chinnan and Savarimuthu and the same was decreed. In execution proceedings initiated by Meyyal, the suit property was sold in Court auction and the same was purchased by Meyyal. She also had taken delivery of the property through Court and the delivery receipt has been marked as Exhibit A.3. Thus Meyyal had become absolute owner of the suit property. After death of Meyyal, her only son, Chellappan, father of the plaintiff got the suit property and he has been paying tax to the Government. The name of the plaintiff's father Chellappan was also entered in the revenue documents. After death of Chellappan, plaintiff and her siblings entitled to suit property. It was further claimed by the plaintiff that during life time of plaintiff's father, he permitted first defendant to occupy the suit property and he has been in possession of the property only in that capacity. The first defendant is



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none other than son of Chinnan, against whom suit was filed by the plaintiff's grand-mother Meyyal. During re-survey, the plaintiff's name included in the Village record and she has been paying tax to the Government. The plaintiff also exercise her right over the suit property by executing a mortgage in respect of the suit property in favour of one Sivasankaran. Later first defendant submitted an application to second defendant for grant of patta in respect of the suit property. He has no right or title over the suit property. In view of the attempt by first defendant to assert title, plaintiff had terminated the permission granted to him and filed a suit for declaration of title and recovery of possession.

4. The first defendant resisted the suit on the ground that suit property was his ancestral property. It was his case that suit property originally belonged to one Alagan Perumal and after his death, his sons Chinnan and Savarimuthu partitioned the property and the present suit property was allotted to the share of Chinnan. After the death of Chinnan, the first defendant inherited the property and have been in possession and enjoyment of the same. The first defendant specifically denied the allegation in the plaint as if the suit property was sold in Court auction and plaintiff's grand-mother Meyyal purchased the property in



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Court auction and obtained delivery. It was asserted by the first defendant that he and his predecessor in interest alone have been in possession and enjoyment of the suit property for more than 100 years. The allegation in the plaint regarding exercise of right and enjoyment by the plaintiff and his father were also denied. Thus claiming absolute right over the suit property by inheritance, the first defendant sought for dismissal of the suit.

5. Before the Trial Court, the husband of the plaintiff was examined as P.W.1 and 8 documents were marked on her side as Exhibits A.1 to A.8. The first defendant was examined as D.W.1 and three Other witnesses were examined on their behalf as D.W.2 to D.W.4. On behalf of the defendants, 9 documents were marked as Exhibits B.1 to B.9.

6. On appreciation of oral and documentary evidence available on record, the Trial Court came to a conclusion that plaintiff was entitled to relief as prayed for and decreed the suit. Aggrieved by the same, the first defendant preferred an appeal in A.S.No.139 of 2003 on the file of the II Additional Sub Court, Nagercoil. The First Appellate Court came to a conclusion that plaintiff failed to file a suit within 12 years from the date



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of her dispossession and therefore, the suit filed by the plaintiff was barred by limitation and allowed the appeal. Aggrieved by the same, the plaintiff has come by way of the second appeal.

7. At the time of admission, this Court formulated the following substantial question of law by an order, dated 09.12.2019:

"Whether the Lower Appellate Court erred in law in proceeding on the assumption that the appellant failed to establish the possession of the suit property for the period of 12 years before filing the suit without advertng to Articles 64 and 65 of the Limitation Act, 1963?"

8. The learned Counsel appearing for the appellant submits that Exhibits A.1 to A.3 would establish the plaintiff's grand-mother Meyyal had obtained delivery of the suit property through Court after purchase in Court auction sale. Therefore, the title of plaintiff's grand-mother Meyyal is proved. The plaintiff also produced Exhibit A.4 tax receipt in her name and the same would prove that she inherited the property and she has been enjoying the same as absolute owner. The learned Counsel for the appellant further submitted that when the title of the plaintiff is proved,



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she is entitled to recover possession from the first respondent, who is unable to show any semblance of right over the suit property. The learned Counsel for the appellant further submitted that first defendant failed to lead any evidence to show that he enjoyed the property for more than statutory period with necessary *animus* to deny the title of the plaintiff and her predecessor. Therefore, the First Appellate Court committed an error in holding that suit was barred by limitation without referring to Article 65 of the Limitation Act.

9. Though the contesting first respondent was served and the learned Counsel entered appearance, there is no representation for the first respondent. The respondents 2 and 3, Government officials are only formal parties. It is stated that respondents 4 to 12 are siblings of the plaintiff and they remained *ex parte* throughout.

10. Exhibits A.1 to A.3 would establish that plaintiff's grand-mother Meyyal filed a suit for recovery of money against Chinnan, father of the first defendant and Savarimuthu. The same suit was decreed and suit property was brought in Court auction sale and the same was purchased by plaintiff's grand-mother Meyyal. Exhibit A.3 clearly



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establish the suit property was delivered to plaintiff's grand-mother Meyyal through Court. It is the case of the plaintiff that her father Chellappan was only son of said Meyyal and after Meyyal's death, Chellappan enjoyed the suit property as absolute owner. After the death of Chellappan in the year 1981, plaintiff and her siblings succeeded to the suit property. Therefore, even as per the averments found in the plaint, the appellant / plaintiff is not entitled to absolute title over the suit property. As one of the legal heirs of Chellappan, plaintiff is entitled to only a share in their suit property. In such circumstances, the plaintiff is not entitled to declaration of title as prayed for. However, the plaintiff is entitled to a declaration that he is a co-owner of the suit property along with defendants 4 to 12.

11. It is settled law, a suit for relief of recovery of possession is maintainable against a trespasser by a co-owner. If property is delivered to a co-owner in execution of decree for recovery of possession obtained by him, the benefit will go to the plaintiff and other co-owners. He is deemed as a trustee for the other co-owners. The Trial Court rightly understood the said position of law and held even though the other co-owners of the suit property were not added as plaintiff in the present



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suit, the plaintiff Anthonyammal in her capacity as a co-owner of the property is entitled to recover possession from the first defendant, who has no right over the suit property. It is the case of the plaintiff that first defendant was permitted by his father Chinnan to occupy the suit property and the permission granted to him was cancelled by her. The first defendant has not produced any document to show his right over the suit property. Further first defendant happens to be the son of Chinnan, against whom suit was filed by plaintiff's grand-mother Meyyal. In the written statement, the first defendant claimed title over the suit property as a heir of Chinnan. Exhibits A.1 to A.3 establish plaintiff's grand-mother Meyyal filed a suit for recovery of mortgage debt against Chinnan and his brother Savarimuthu and obtained a decree. In the execution proceeding, suit property was brought to sale and the same was purchased by Meyyal and delivery was effected in favour of Meyyal under Exhibit A.3. Therefore, the plea raised by the first defendant as if he has got right over the suit property as a heir of Chinnan is rejected in the light of Exhibits A.1 to A.3. Therefore, the first defendant is unable to show any semblance of right over the suit property. In such circumstances, his occupation shall be treated only as a trespasser. This Court already came to a conclusion, suit by a co-owner against trespasser



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is very well maintainable and the same is not only for the benefit of the co-owner plaintiff but also for the benefit of other co-owners. The First Appellate Court non suited the plaintiff mainly on the ground that she failed to establish her possession within 12 years immediately preceding the presentation of the plaint. The plaintiff filed a suit based on her title [as co-owner] over the suit property. Therefore, the relevant article for the purpose of calculating the limitation for the suit is Article 65 of the Limitation Act. The same reads as follows:

Articles	Description of suit	Period of limitation	Time from which period begins to run
01.			
02.			
65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

12. A reading of above provision would make it clear that time limit for filing a suit for recovery of possession based on title is 12 years from the date on which the possession of the defendant becomes adverse



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to that of the plaintiff. In the case on hand, the defendant has not produced any evidence to show that he has been in hostile possession of the suit property for more than 12 years, immediately preceding the presentation of the plaint. The tax receipts and other revenue documents filed by the defendant are of the year 1997. The suit was filed on 22.09.1997. Therefore, absolutely, there is no evidence available on record to suggest that first defendant enjoyed the property adversely with necessary *animus* for more than statutory period immediately preceding the presentation of the plaint. In such circumstances, the suit filed by the plaintiff for recovery of possession is very well within time as per Article 65 of the Limitation Act. The First Appellate Court wrongly applied Article 64 and non suited the plaintiff. Therefore, the question of law framed at the time of admission is answered in favour of the appellant and the judgment and decree passed by the First Appellate Court is set aside.

13. In view of the discussion made earlier, the second appeal is allowed and it is declared that plaintiff is the owner of the property along with her siblings, namely, respondents 4 to 12 and as a necessary consequence, she is entitled to recover possession from the first



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defendant. It is made clear the decree for possession granted in favour of the plaintiff is not only for her benefit and also for the benefit of her siblings, who are arrayed as respondents 4 to 12.

14. With these clarifications, this Second Appeal stands allowed.

There shall be no order as to costs.

20.06.2024

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

To

- 1.The II Additional Subordinate Judge,
Nagercoil.
- 2.The Principal District Munsif Court,
Nagercoil.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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4.The District Collector,
The State of Tamil Nadu,
Kanyakumari District, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

5.The Tahsildar,
Thovalai Taluk, Boothapandy,
Boothapandy Village,
Kanyakumari District.



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S.SOUNTHAR, J.

BTR

Judgment made in
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Dated:
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