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S.A(MD)No.529 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.529 of 2005

- 1.Deivanaiammal
- 2.Palanisamy
- 3.Arivagalagan (died)
- 4.Kalaimani
- 5.Murugu @ Murugeswari

... Appellants 1 to 5/Respondents/
Defendants

- 6.P.Vasuki
- 7.A.Pradeep Kumar
- 8.A.Shanmugapriya

... Appellants 6 to 8

(Appellants 6 to 8 are brought on record as Lrs of the
deceased 3rd appellant vide order dated 30.09.2022
made in C.M.P(MD)Nos.8138 to 8140 of 2022
in S.A(MD)No.529 of 2005 by NSSJ)

Vs.

- 1.Mayilammal (died) ... 1st Respondent/Appellant/Plaintiff
- 2.M.Latha ... 2nd Respondent

(2nd Respondent is brought on record as Lr of the
deceased sole respondent vide order dated 19.10.2022
made in C.M.P(MD)No.8141 & 8142 of 2022
in S.A(MD)No.529 of 2005 by NSSJ)



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Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 23.02.2005 passed in A.S.No.109 of 2004, on the file of the Sub Court, Periyakulam, reversing the judgment and decree dated 13.08.2004 passed in O.S.No.316 of 2001, on the file of the District Munsif Court, Periyakulam.

For Appellant : Mr.V.George Raja
for M/s.Ajmal Associates
For R – 2 : No appearance

JUDGMENT

This Second Appeal has been directed against the Judgment and decree, dated 23.02.2005 passed in A.S.No.109 of 2004, on the file of the Sub Court, Periyakulam, wherein, the Judgment and decree, dated 13.08.2004 passed in O.S.No.316 of 2001, on the file of the District Munsif Court, Periyakulam, are reversed.

2.Originally, the first respondent herein as plaintiff has instituted a suit in O.S.No.316 of 2001 on the file of the trial Court for the relief of declaration of title and for recovery of possession after demolishing the existing construction and for an injunction not to alienate or mortgage the property.



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3. Pending the second appeal, the first respondent/plaintiff died and the second respondent is brought on record as legal representative of the deceased first respondent/plaintiff and the third appellant/3rd defendant died and the appellants 6 to 8 are brought on record as legal representatives of the deceased third appellant/3rd defendant.

4. For the sake of convenience, the parties are referred to as, as described before the trial Court.

5. In the plaint, it is averred that the suit property was situated in Kottur Village of Theni Taluk. Originally, the suit property belonged to one Ponnan and the same was purchased by the plaintiff on 20.05.1959 for a valid consideration and she was cultivating the suit property. While so, the plaintiff's husband Velusamy decided to run a School in the suit property and he promised that he would hand over the possession of the suit property whenever the plaintiff required the same. Orally, the suit property was given in possession to the husband



of the plaintiff on 03.06.1991 and no consideration was passed for giving the suit property for running the School. The plaintiff's husband ran the School in the name of 'Kottor Elementary School' and later on it was converted into Middle School. One S.S.Periyakaruppan joined along with the plaintiff's husband and they were in possession and enjoyment of the School and in administration of the suit property. After the death of the said S.S.Periyakaruppan, his legal heirs, namely, late.S.P.Ramasamy, S.P.Velusamy and S.P.Periyakaruppan, were having some difficulties in running the School and hence, panchayat was held. Accordingly, a family arrangement was made, in which, each legal heir shall administer the School for a period of 13 years. Accordingly, since the first legal heirs of S.P.Ramasamy were minors, the second legal heirs of S.P.Velusamy were in administration of the School from 1951 to 1964. In between the said period, in the year 1961, the plaintiff permitted her husband to run the School. Thereafter, from 1964 to 1977 one S.P.Periyakaruppan's legal heirs were in administration of the said School. After 13 years period, in the year 1977 one late.S.P.Ramasamy's legal heirs, viz., Rengasamy, Rajan and Rama, who had attained majority, would have been eligible in the administration of the School. However, since there was a dispute between the parties, without handing over the administration of the



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School to late.S.P.Ramasamy's legal heirs, the said S.P.Periyakaruppan was running the administration of the School and he died on 10.10.1988. After his demise, S.P.Periyakaruppan's wife, who is the first defendant herein and their legal heirs, who are the defendants 2 to 5, were running the School. In the meantime, without informing the plaintiff, the defendants clandestinely got patta from the revenue department in patta No.154 in R.D.R.No.734/1990-1991 and R.D.R.No. 1396/1990-1991 in M.C.P.No.591 Taluk in Mu.Mu.No. 12831/1991-1992, dated 09.07.1992 and patta Nos.786, 1089 and 2076 have been issued in favour of the defendants and with an intention to grab the property, they obtained patta and chitta in their names. The plaintiff has filed chitta and andagal for falsi year 1390-1410 for the suit property.

6.Further, according to the plaintiff, when S.P.Veluchamy approached the plaintiff, who is the owner, had given only permissive occupancy and no documents have been executed by the plaintiff at any point of time in favour of the defendants or her husband for changing the patta and they are not having right to mutate patta in their names. According to the plaintiff, as she has got right over the property, the defendants cannot claim a right over the property by



adverse possession also. Further, the plaintiff would submit that only as like minded Partners, the administration of the School has been effected between the plaintiff's husband and the defendants and the plaintiff cannot be denied the right of recovery of possession. From the year 1981 to 2001, there was no such encumbrance over the suit property and she had also filed an Encumbrance certificate to that effect. Since the plaintiff's husband died and she was in ailment and she had no income, she decided to sell the property and when she approached the defendants for recovery of possession of the property, after demolishing the building, they did not hand over the suit property to the plaintiff. While so, on 15.09.2001, the plaintiff had sent a legal notice and a reply was sent on 25.09.2001 by the defendants. Since the defendants have not handed over the possession of the suit property to the plaintiff and they are trying to sell the suit property clandestinely, the plaintiff has filed the suit for the aforesaid relief.

7.The defendants filed a written statement, wherein they stated that the averments made by the plaintiff are not proved and the affidavit in I.A.No.563 of 2001 has to be taken as part of the written statement and they would submit that the statement made by the plaintiff that she had purchased the property on 20.05.1959 and she



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was cultivating the lands are all denied as false. They would further submit that for the construction of the School, one S.P.Velusamy paid a sum of Rs.300/- to the plaintiff and the same has been witnessed and signed by Rengasamy, S.S.Veerassamy, Sannasipillai and the plaintiff's father-in-law S.S.Periyakaruppan and the same has been handed over to S.P.Periyakaruppan by the plaintiff and the said receipt has been filed by the defendants as document in the suit. The defendants would submit that they paid a sum of Rs.300/- and thereafter, they took possession of the property by way of sale on 24.11.1960 and the site approval was given by the Educational Authority, Dindigul and on 05.06.1963, the District Educational Officer, Dindigul has permitted for construction of the School and the same has been filed as a document. They would further submit that the plaintiff has given a letter to the Chief Educational Officer for relinquishment of right to the suit property. They further submit that after paying a sum of Rs.300/- and getting no objection, the School was constructed and for running the classes from Class V to VIII, they got permission from the Educational authority and the said permission order has also been filed as a document. The School has been running for 40 years and Jilla board special officer was appointed as joint pattadar and the averment made by the plaintiff that the School administration is an arrangement made



after Panchayath and they decided to run the School by S.P.Ramasamy, S.P.Velusamy and S.P.Periyakaruppan for 13 years each is all denied as false and the same has not been proved by the plaintiff. From 1964 to 1977, the School was administered by the legal heirs of S.P.Periyakaruppan for a period of 13 years period and thereafter, in the year 1977, the School administration has to be handed over to the first legal heirs of S.P.Ramasamy and the said S.P.Periyakaruppan has not handed over the School administration by taking advantage of the family background of Rajan are all false.

8.The defendants admitted the fact that on 10.10.1988, the said S.P.Periyakaruppan died and there was no dispute between the legal heirs of the said S.P.Periyakaruppan and they are running the School in a united manner. Thereafter, since a dispute arose between the legal heirs of S.P.Periyakaruppan, the Educational authority appointed the fourth defendant as a Headmistress to administer the School and the fourth defendant was paying the salary to the Teachers. Thereafter, the fifth defendant was appointed as a Headmistress. Hence, the defendants would submit that since the Educational Officer has not been made as a party in the suit proceedings, the same has to be dismissed on the ground for non-joinder of necessary parties. On



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04.07.1992, the Tahsildar of Periyakulam issued an order in Mu.Mu.No. 2381/1991, wherein patta has been mutated in the defendants' name is known to the plaintiff and the same has been sent to the plaintiff by the Tahsildar and it was not a forged document or clandestinely obtained document and they would submit that it was only a School and it is not an agricultural land. The prayer of the plaintiff cannot be accepted and without a prayer seeking for permanent injunction, the plaintiff cannot seek for declaration and they prayed for dismissal of the suit for no cause of action arises.

9.The defendants have also filed an additional written statement wherein they would submit that originally the School was constructed by one S.S.Periyakaruppan and named 'S.S.P.Adult Literacy School' and thereafter his son S.P.Velusamy obtained permission from the Educational authorities for running the School. The School is an aided School and since they have not made the Educational Authority as a party to the suit, the suit has to be dismissed. Further, the second defendant was the Manager for the said School, who was appointed by the District Educational Officer on 16.07.2003 and the second respondent was running the School and the plaintiff cannot seek for a prayer where the School has been running for 40 years and when there

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was no objection raised at that time, now the plaintiff cannot seek for recovery of possession as the defendants are also having a right by way of adverse possession and prayed for dismissal of the suit.

10.Before the trial Court, on the side of the plaintiff, one Pangajavalli Rajan was examined as P.W.1 and one Chinnasamy was examined as P.W.2 and Exs.A1 to A11 were marked. On the side of the defendants, one P.Palanichamy was examined as D.W.1 and Exs.B.1 to B.6 were marked.

11.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has dismissed the suit. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred an Appeal Suit in A.S.No.109 of 2004, on the file of the first appellate Court.

12.The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the



appeal and granted three months time to the defendants to hand over the vacant possession of the suit property and thereby set aside the Judgment and decree passed by the trial Court. Against the Judgment and decree passed by the first appellate Court, the present second appeal has been preferred at the instance of the defendants as appellants.

13.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'1.Whether the learned Appellate Court is correct in shifting the burden of proof on the defendants/appellants in a suit filed by the plaintiff/respondent for declaration and for recovery of possession?

2.Whether the learned Appellate Court is correct in holding that the appellants/defendants are only permissive occupants in the absence of any piece of evidence adduced by the plaintiff/respondent to the effect?

3.Whether the learned Appellate Judge is correct in holding that the defendant cannot take inconsistent plea claiming independent right of title as well as by



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adverse possession especially when the said principle shall apply only for the plaintiff?'

14.The learned counsel appearing for the appellants/defendants would submit that the defendants have been in possession and enjoyment of the suit property by constructing the School buildings and running the School from the year 1963 and since the plaintiff filed the suit for declaration and recovery of possession, it is the duty of the plaintiff to prove her case by adducing legally acceptable evidence without expecting the defendants to prove their case. He would further submit that the Appellate Court has erred in shifting the burden of proof on the defendants in the suit filed by the plaintiff for declaration and for recovery of possession; the Appellate Court ought to have seen that the plaintiff failed to file the original sale deed, dated 20.05.1959, relied upon by her to sustain the relief for declaration and as such, the Appellate Court is not correct in decreeing the suit as prayed for.

15.The learned counsel appearing for the appellants/defendants would further submit that the Appellate Court is



not correct in holding that the defendants were permitted by the plaintiff to occupy the suit property for running the School without any materials or documents to that effect; the Appellate Court failed to see that the plaintiff having pleaded permissive possession by the defendants had not ventured to enter into witness box to support her case of permissive occupation and as such, the Appellate Court is not correct in holding that the defendants are only permissive occupants of the suit property; the Appellate Court is not correct in rejecting Ex.B1 on the ground that it is an unregistered letter especially when the said document could have been relied upon for the proof of possession of title by adverse possession; the Appellate Court is not correct in ignoring the patta granted under Ex.A.5 in favour of the defendants in respect of the suit property especially when the said patta granted on 20.09.2001, though known to the plaintiff has not challenged the same and the said patta having become final, the plaintiff is not entitled to challenge by virtue of Article 58 of the Limitation Act; the Appellate Court ought to have seen that the chitta made as Ex.A.3 does not elicit the absolute ownership of the suit property having regard to the fact that the chitta was issued in favour of five persons and as such the plaintiff cannot filed the suit for declaration and recovery of possession, as she failed to prove her independent right, title and ownership of suit



property; the Appellate Court failed to see that the plaintiff has not produced any materials for the alleged family arrangements for running the School periodically by rotation and as such, her case ought to have been rejected in toto; the Appellate Court ought to have seen that the plaintiff neither examined herself nor examined any independent witnesses in support of her case for declaration; the Appellate Court ought to have seen that the plaintiff having alleged the permissive possession in the year 1961, allowed the construction of magnificent buildings for running of the School and having kept quiet since 1961, had chosen to claim rightly only in the year 2001 by issuing legal notice before filing the suit and the Appellate Court ought to have seen that no relief for declaration and recovery of possession can be granted without seeking the relief of mandatory injunction to demolish the School buildings situate in the suit property and prayed for allowing the Second Appeal.

16.No representation for the second respondent.

17.Heard the learned counsel appearing for the appellants and perused the materials available on record.



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18. According to the plaintiff, originally, the suit property belonged to one Ponnann and the same was purchased by the plaintiff on 20.05.1959 for a valid consideration and she was cultivating in the suit property. While so, the plaintiff's husband Velusamy decided to run a School in the suit property and he promised that he would hand over the possession of the suit property whenever the plaintiff required the same. Orally, the suit property was given in possession to the husband of the plaintiff on 03.06.1991 and no consideration was passed for giving the suit property for running the School. The plaintiff's husband ran the School in the name of 'Kottor Elementary School' and later on it was converted into Middle School. One S.S.Periyakaruppan joined along with the plaintiff's husband and they were in possession and enjoyment of the School and in administration of the suit property. After the death of the said S.S.Periyakaruppan, his legal heirs, namely, late.S.P.Ramasamy, S.P.Velusamy and S.P.Periyakaruppan, were having some difficulties in running the School and hence, a panchayat was held. Accordingly, a family arrangement was made, in which, each legal heir shall administer the School for a period of 13 years. Accordingly, since the first legal heirs of S.P.Ramasamy were minors, the second legal heirs of S.P.Velusamy were in administration of the School from



1951 to 1964. In between the said period, in the year 1961, the plaintiff gave permission to her husband to run the School. Thereafter, from 1964 to 1977 one S.P.Periyakaruppan's legal heirs were in administration of the said School. After 13 years period, in the year 1977 one late.S.P.Ramasamy's legal heirs, viz., Rengasamy, Rajan and Rama, who had attained majority, would have been eligible in the administration of the School. However, since there was a dispute between the parties, without handing over the administration of the School to late.S.P.Ramasamy's legal heirs, the said S.P.Periyakaruppan was running the administration of the School and he died on 10.10.1988. After his demise, S.P.Periyakaruppan's wife, who is the first defendant herein and their legal heirs, who are the defendants 2 to 5, were running the School. In the meantime, without informing the plaintiff, the defendants clandestinely obtained patta in their names. According to the plaintiff, as she has got right over the property, the defendants cannot claim a right over the property by adverse possession also. From the year 1981 to 2001, there was no such encumbrance over the suit property. Since the plaintiff's husband died and she was in ailment and she had no income, she decided to sell the property and when she approached the defendants for recovery of possession of the property, after demolishing the building, they did not



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hand over the suit property to the plaintiff. While so, on 15.09.2001, the plaintiff had sent a legal notice and a reply was sent on 25.09.2001 by the defendants.

19. According to the defendants, for the construction of the School, one S.P.Velusamy paid a sum of Rs.300/- to the plaintiff and the same has been witnessed and signed by Rengasamy, S.S.Veerasamy, Sannasipillai and the plaintiff's father-in-law S.S.Periyakaruppan and the same has been handed over to S.P.Periyakaruppan by the plaintiff and the said receipt has been filed by the defendants as documents in the suit and thereafter, they took possession of the property by way of sale on 24.11.1960 and the site approval was given by the Educational Authority, Dindigul and on 05.06.1963, the District Educational Officer, Dindigul has permitted for construction of the School. The plaintiff has given a letter to the Chief Educational Officer for relinquishment of the right to the suit property. After paying a sum of Rs.300/- and getting no objection, the School was constructed and for running the classes from Class V to VIII, they got permission from the Educational authority. The School has been running for 40 years and Jilla board special officer was appointed as joint pattadar. The defendants admitted the fact that on 10.10.1988,

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the said S.P.Periyakaruppan died and there was no dispute between the legal heirs of the said S.P.Periyakaruppan and they are running the School in a united manner. Thereafter, since a dispute arose between the legal heirs of S.P.Periyakaruppan, the Educational authority appointed the fourth defendant as a Headmistress to administer the School and the fourth defendant was paying the salary to the Teachers. Thereafter, the fifth defendant was appointed as a Headmistress. According to the defendants, since the Educational Officer has not been made as a party in the suit proceedings, the same has to be dismissed on the ground for non-joinder of necessary parties. On 04.07.1992, the Tahsildar of Periyakulam issued an order in Mu.Mu.No.2381/1991, wherein patta has been mutated in the defendants' names. Originally the School was constructed by one S.S.Periyakaruppan and named 'S.S.P.Adult Literacy School' and thereafter his son S.P.Velusamy obtained permission from the Educational authorities to run the School.

20.On perusal of the materials available on record, it is seen that one Pangajavalli Rajan, who was examined as P.W.1, has executed a general power of attorney, dated 04.12.2001 in favour of the plaintiff and the same has been marked as Ex.P.1; Ponnan executed a sale deed in favour of the plaintiff on 20.05.1959 and the

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same has been marked as Ex.P.2; Ex.P.3 is Jamapanddi Chitta; Ex.P.4 is Adangal; Ex.P.5 is a joint patta which has been executed in favour of Deivanai and four others; Ex.P.6 is adangal and other documents are Encumbrance certificate and notices sent by each party.

21.It is seen that Ex.P.2 is a sale deed executed in favour of the plaintiff by one Ponnan, which shows that the plaintiff is the title holder of the suit property and the plaintiff has proved her title by way of producing the documents, namely Adangal, chitta and other materials to prove that the plaintiff is the owner of the property and when the plaintiff has proved the title, it is the burden of the defendants to deny the same by producing appropriate documents and in what manner they have right to get into the property. The defendants' documents are only the documents written by the Chief Educational Officer to the Manager and all relating to the Educational Department and no document has been produced to show that they have any title in their favour. Further, it is seen that the defendants have not shown any single document to prove that they have been issued appropriate patta based on documents in favour of them or any title deed. The only document is the receipt filed by D.W.1 that the plaintiff received a sum of Rs.300/-, which has been marked as Ex.B.1.

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It is seen that the exhibits filed on the side of the defendants are all communication between the educational authorities and no document has been filed on the side of the defendants to prove that they are in possession and enjoyment of the suit property. The defendants also claimed adverse possession. Here it is seen that the plaintiff on her own has given the property stands in her name and to run the school which has also been admitted by the defendants who stated that they paid Rs.300/- and received a receipt for construction of the School, but there was no such document to show that there was any sale from the said land in favour of the defendants. The patta will not be subject to prove the title. Hence, the first question of law is held against the defendants.

22.On perusal of the written statement filed by the defendants, they have stated that 'எஸ்.பி.வேலுச்சாமி தாவா இடத்தில் பள்ளிக்கூடம் கட்ட வாதியிடம் ரூ.300/- கொடுத்து கோட்டூரில் உள்ள பெரிய மனிதர்களான சாத்தக்காரி மகன் ரெங்கசாமி-1, சுருளி மகன் எஸ்.எஸ்.வீராச்சாமி – 2, அ.சன்னாசிபிள்ளை – 3 மற்றும் வாதியின் மாமனார் எஸ்.எஸ்.பெரியகருப்பன் ஆகியோர்கள் கையெழுத்திட்டு தாவா இடத்தை எஸ்.பி.பெரியகருப்பனிடம் வாதி கொடுத்தார்', from which, it is seen that it is only permission given to the defendants for the construction of the School and it is not a sale deed

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or any other document. Hence, this itself would show that the defendants are only permissive occupants and not by way of absolute sale, they have purchased the suit property. In the next line, they have stated that 'தாவா இடத்தை ரூ.300/- கொடுத்து கிரையம் பெற்றபின் 24.11.1960ம் தேதியில் திண்டுக்கல் மாவட்ட கல்வி அதிகாரி தாவா இடத்திற்கு சைட் அப்ருவல் கொடுத்ததும் தாக்கல் செய்யப்பட்டுள்ளது.'. If at all it was a sale deed, no such document has been produced by the defendants to show that the suit property has been purchased by paying a sum of Rs.300/- to the plaintiff. Hence, the claim is also negated and the second substantial question of law is held against the defendants.

23.Regarding the third question of law, contradictory evidence has been let in by the defendants. In one point, the defendants have stated that they have purchased the suit property by paying Rs.300/- by way of sale and in another point, they have stated that the defendants are in enjoyment of the said property by way of adverse possession and with the knowledge of the plaintiff, they are running the School for 40 years and the defendants have taken inconsistent plea and the third question of law is held against the defendants. Further, the first Appellate Court has rightly allowed the first appeal and this Court is of the view that there is no merit on the



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part of the defendants. The substantial questions of law are ordered accordingly in favour of the plaintiff and against the defendants. The defendants have failed to substantiate their claim by adding appropriate documents to prove their right. In the absence of any documents to establish their title, this Court is of the view that the defendants are not entitled for any interference in the Judgment rendered by the first Appellate Court.

24.In fine, this second appeal is dismissed without costs and the Judgment and decree, dated 23.02.2005 passed in A.S.No.109 of 2004, on the file of the Sub Court, Periyakulam, is confirmed. Since the defendants are running the School in the suit property, this Court is of the view that time should be given for the defendants to vacate the building and handover the vacant possession to the plaintiff, accordingly, seven months time is given to the defendants to vacate the suit schedule property ie., on or before 30th April 2025.

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To

- 1.The Sub Court,
Periyakulam.
- 2.The District Munsif Court,
Periyakulam.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in

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