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S.A.No.1507 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.08.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.No.1507 of 2001

Perumal

...Appellant

Vs.

1.Velappa Naicker (Died)
2.Nataraj
3.Chinnu
4.Murugan (Died)
5.Sathyan
6.Venkittammal
7.Pappammal
8.Gomathi
9.Minor Kaleeswaran
(rep. by its mother Mrs.Gomathi)
(Respondents 8 and 9 are brought on
record as LR's of the deceased
4th respondent vide Court Order
dated 20.01.2023)

10.Vijaya
11.Saravanan
(Respondents 10 & 11 are brought
on record as LR's of the deceased
1st respondent vide Court Order
dated 01.08.2023)

12.Kruthika
13.Shalini

1/13



14.Santhiya

(Respondents 12 to 14 are brought
on record as LR's of the deceased
4th respondent vide Court Order
dated 07.02.2024)

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the learned First Additional Sub Court at Trichy in A.S.No.481/99 dated 31.03.2000 confirming the judgment and decree in O.S.No.297/1993, dated 19.09.1997 on the file of the District Munsif Court, Manapparai.

For Appellant	: Mr.K.Govindarajan for M/s.Sarvabahuman Association
For Respondents	: No appearance

JUDGMENT

The appellant is the plaintiff and the respondents are the defendants.

The plaintiff filed a suit in O.S.No.279 of 1993, on the file of the District Munsif Court, Manapparai for declaration and consequential injunction.

The District Munsif Judge, Manapparai has partly allowed the suit in respect of the item Nos.1 to 5 and dismissed the suit in respect of item Nos.6 & 7.

Aggrieved against the same, the plaintiff has filed an appeal in A.S.No.152 of 1997, on the file of the Sub-Court, Trichirappalli. The learned Sub-Judge



dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved against the said judgment and decree, the plaintiff has filed the present second appeal.

2.The case of the plaintiff is that he has been in effective possession and enjoyment of suit properties till to date after paying all taxes and charges incidental thereto and without interference from any source muchless from the defendants at earlier point of time. By his long, continuous, open, exclusive, absolute, uninterrupted, peaceful, effective adverse and notorious possession and enjoyment of suit properties for over statutory period and to the knowledge of defendants, the plaintiff has prescribed and perfected title to the suit properties as well. Thus, the plaintiff has been exercising valid, unimpeachable and full-fledged ownership right over the suit properties till to date.

3. The plaintiff and the defendants belong to Naicker community and as such they are relatives. Further, the defendants own landed properties with an irrigation well continuous to suit properties and this well is having copious supply of water. On the other hand, the well situate in the 6th item of suit properties is having scarce supply of water, with the result, the



cultivation operation on the suit properties would be hampered off an on.

It is submitted that the defendants, who are quite strangers to the suit properties and who do not have any vestige of right over the suit properties are not entitled to pitch rival claim over the suit properties under any pretext. Notwithstanding that, the defendants persist in giving out further threat of interference over the plaintiff's peaceful possession and enjoyment of suit properties. Therefore, the plaintiff has filed the suit for declaration and injunction.

4. The second defendant filed a written statement denying all the averments made in the plaint except the one that has been admitted. The fact that the suit properties absolutely belongs to the plaintiff and he has developed the property for more than the statutory period has been denied. The averment that plaintiff has drawn water from the suit well and irrigated his land is false. The plaintiff has separate well to irrigate his land. The suit property has never been enjoyed by the plaintiff absolutely. The fifth defendant, who is the sister of second defendant has also right and entitle over the suit property. The plaintiff has filed the suit including the property of the 5th defendant. The plaintiff as he was employed as Village Administrative Officer using his administrative power has obtained patta



and filed the suit. Hence, the suit is not sustainable in law. The plaintiff while sought for declaration has not properly valued the suit property and 5 HP motor bump-set and has not paid the proper Court fee. The plaintiff has no cause of action to file the suit hence, the same may be dismissed with costs.

5. The 7th defendant has filed a written statement, which was adopted by the defendants 1 & 6 and the averments are stated as below:-

The plaintiff is not entitled to the relief as sought for the in the plaint. The plaintiff has filed the suit with false averments. This defendant has denied the fact that the plaintiff obtained the suit property ancestrally. It is also denied that the plaintiff has enjoyed the suit property by paying necessary property tax. The fact that the plaintiff has improved the property and enjoyed the same for more than the statutory period is denied. The documents filed along with the plaint are created only for the purpose of filing the suit. It is accepted that the plaintiff is the relative of defendants and also the fact that they have lands adjacent to each other. The fact that the plaintiff has drawn water from the well of the defendants and irrigated his land is denied. In this aspect, the defendants have try to disturb the possession and enjoyment of the suit property by the plaintiff is false and



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imaginary one. The survey number of the suit property is S.No.224/3 which was enjoyed by the ancestors of 6th and 7th defendants and now the defendants 6 & 7 enjoyed the same by heritage. The suit property belongs only to the defendants 6 & 7 and not anyone else. The plaintiff in his administrative power as Village Administrative Officer has changed the documents in respect of suit properties and the same does not bind this defendants. the survey number 224/3 was in the enjoyment of the defendants. The 5 HP Electric Motor in the suit property stands in the name of Cheethapatti Moora ancestor of the defendants. Hence, prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, he was examined as P.W.1 and Exs.A1 to A8 were marked. On the side of the defendants, defendants 1 to 3 were examined as D.W.1 to D.W.3 and Ex.B.1 to Ex.B8 were marked.

7. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, has partly allowed the suit in respect of item Nos.1 to 5 and dismissed the suit in respect of item Nos.6 & 7.



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8. Aggrieved against the same, the plaintiff has filed an appeal in A.S.No.152 of 1997, on the file of the Sub-Court, Trichirappalli. The learned Sub-Judge dismissed the appeal by confirming the judgment and decree of the trial Court.

9. Challenging the said concurrent judgment and decree passed by the first appellate Court, the present Second Appeal has been preferred by the plaintiff.

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

"1) Whether the judgments and decrees of the Courts below are sustainable in law as the plaintiff's case has been rejected without even considering Exs.A1 and A2 under which the plaintiff claims title to the property in question.?"

11. The learned counsel appearing for the appellant would submit that the Courts below have failed to consider the documents filed by the appellant and this has vitiated in its entire judgment. The Courts below have failed to formulate the proper issues involved in the suits and in this aspect, issues framed by the Courts below are not in accordance with the case put



forth by the appellant. The entire judgment of the courts below are only on the basis of the documents filed by the respondent and without considering and discussing the documents filed on the side of the appellant and this has vitiated the entire judgment. The Courts below ought to have considered Ex.A1 and Ex.A2 documents through which the appellant claims title to items 6 & 7 of the suit property and in this aspect the Courts below have failed to see that the appellant has filed the original document and both the documents are more than 30 years old. The Courts below ought to have decreed the suit once have in found that the documents filed by the appellant will clearly establish possession of the suit property by the appellant. The Courts below ought to have decreed the suit on the basis of Ex.A3 to Ex.A7 coupled with Ex.A1 and Ex.A2 which clearly establish the title and possession of the suit property in favour of the appellant. The Courts below erred in coming to the conclusion that the 7th respondent is entitled to items 6 & 7 on the basis of Ex.B1 overlooking the fact that even prior to Ex.B1, the appellant had got title to the suit property through Ex.A1 and Ex.A2 and the respondent failed to produce any other documents except Ex.B1 to show that the property belonged to them ancestrally. The Courts below erred in coming to the conclusion that Ex.A3 patta was obtained by the appellant only under influence and in this aspect, the Courts below failed to see that



the respondents failed to establish the same by any oral or documentary evidence and prayed for allowing the appeal.

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12. No representation for the respondents.

13. It is seen from the records that Ex.A4 and Ex.A5 the tax receipts stands in the name of Moora Naicker and patta stands in the name of Pappammal. Ex.D3 & Ex.D4 Gist Receipts stands in the name of Moora Naicker. Ex.D8 Settlement deed and 224/3, 224/4 properties belonging to survey Nos.6 & 7 are registered in the name of Pappammal. Even though, the plaintiff and the defendants are relatives, the plaintiff has stated that he is enjoying the properties in 6th and 7th items, as per the documents filed by the plaintiff Ex.A3 the individual patta, the property survey Nos.224/3, 4 is given in the name of Chinnu Naicker's son Perumal. In Ex.A5 the plaintiff side documents 224/3 & 4 are shown in the Adangal of Pappammal. In Ex.A6 also the suit items 6 & 7 of the property survey Nos.224/3 & 4 stands in the name of Pappammal and Perumal. For the Fasli 1392 in Survey No. 224/3, 4 the plaintiff's properties and the suit properties are brought under the Adangal of one Perumal in Survey No.224/C. There is no reason to reject the claim of the plaintiff that he has changed his document in his name



though item 6 & 7 of the suit property, the Adangal stands in the name of Pappammal and defendants.

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14. The trial Court as well as the appellate Court have considered both aspects and dismissed the suit and the appeal. The only question involved in this second appeal is as to whether Exs.A1 and A2 was not considered by the trial Court. On going through the averments in the said sale deeds which has been executed on 20.04.1931 and the other documents executed on 12.11.1935, the schedule of the property was not clear about what is the real extent of the land available for the plaintiff and what is the extent of the land that has been purchased by him and also it is seen that the settlement deed, which has been executed by Moora Naicker in favour of the daughter of the Pappammal. The settlement deed and the lands are in possession and enjoyment of the said Pappammal. It is also further seen that the said settlement deed was later cancelled for the reason that Sathiyamoorthy in whose favour settlement deed was executed, was not in the correct state of mind and hence, a new cancellation deed was executed at the later point of time. Further, item 6 & 7 of the suit properties were in the name of 7th defendant by way of settlement deed as per the document Ex.B8. Further, the 5th defendant has no right over item 6 & 7 of the suit properties as it was



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enjoyed by the 7th defendant by way of settlement deed. Hence, the 5th defendant has no right over the said property. Since the trial Court passed a decree in favour of the plaintiff in respect of item Nos.1 to 5 of suit properties and rejected the claim of the plaintiff regarding item Nos.6 & 7 of the suit properties, the plaintiff has filed the appeal only in respect of 6 & 7 of the suit properties and the first appellate Court on re-appreciation of evidence held that appeal filed by the plaintiff in respect of item 6 & 7 of the suit properties is not sustainable and came to a final conclusion that plaintiff is not entitled to item Nos.6 & 7 and dismissed the appeal confirming the judgment and decree of the trial Court. As these documents Ex.A1 & Ex.A2 are sale deeds through which plaintiff's grand-father purchased the property, later on these properties 1 to 5 wherein plaintiff proved his title has been considered and appropriate judgment in favour of the plaintiff has been rendered. Accordingly, the substantial question of law framed at the time of admission that whether the judgments and decrees of the Courts below are sustainable in law as it has been rejected without even considering the plaintiffs document Ex.A1 and Ex.A2 title documents is answered against the appellant/plaintiff and in favour of the defendants.



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15. For the above said reasons, this Court as an appellate Court does not find any error or irregularity in the judgments and decrees of the Courts below, warranting interference by this Court and as such the second appeal deserves to be dismissed.

16. In fine, the second appeal stands dismissed confirming the judgment and decree of the courts below. No costs.

22.08.2024

Index : Yes/No
Internet : Yes/No
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To

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



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A.No.1507 of 2001

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