



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1175 OF 2001

1.Kalimuthu(died)

2.Namasivayam(died)

3.Saravanan

4.Arayeri(died)

5.Poongodi

6.Malarmani

7.Prasanna

8.Pradeepa

9.Minor Mannan

10.Minor Priyadharshini :Plaintiff/Ist Respondent/Appellants

(Appellants 2 to 5 are brought on record as legal representatives of the deceased sole appellant vide order of this Court made in M.P(MD)No.3 of 2008 in S.A.No.1175 of 2001, dated 22.12.2008)

(memo, dated 23.1.2023 is recorded as fourth appellant died and the appellants 2,3 and 5 who are already on record, are recorded as Legal Representatives of the deceased fourth appellant)

(Minor appellants 9 and 10 are represented by their mother and natural guardian Malarmani/6th appellant herein)

(Appellants 6 to10 are brought on record as Legal representatives of the deceased second appellant as per order of this Court made in C.M.P(MD)No.1488 of 2023 in S.A.No.1175 of 2001, dated 13.2.2023)



.vs.

- | | |
|--|--|
| 1.Thangaiah(died) | :Ist Defendant/2 nd Respondent/
Respondent |
| 2.G.Kamaraj | :2 nd defendant/Ist Appellant/
Respondent |
| 3.Rajagopal | :3 rd defendant/3 rd Respondent/
Respondent |
| 4.Pakkiam | :Defendant No.5/3 rd appellant/
Respondents |
| Velu(deceased)
represented by legal representatives | :4 th defendant/2 nd appellants |
| 5.Chinnaponnu | |
| 6.Mahialaghan | |
| 7.Umadevi | |
| 8.Utthradevi | |
| 9.Ushadevi | |
| 10.Anjammal | |
| 11.Illayaraj | :Third parties/Third parties/
Respondents |

(Memo, dated 5.1.2023 is recorded as the first respondent died and there is no need to take steps against the death of R1 as per order of this Court made in S.A.No.1175 of 2001, dated 5.1.2023)

(Minor respondents 8 to 11 are declared as major and the guardianship of their mother fifth respondent is discharged as per order of this Court made in C.M.P(MD)No.5368 of 2023 in S.A.No. 1175 of 2001, dated 30.6.2023)

(Cause-title accepted as per order of this Court made in C.M.P.No. 10761 of 2001 in S.A.No.1175 of 2001, dated 19.7.2001)



PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.32 of 1998, dated 28.4.2000, on the file of Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai, reversing the judgment and decree made in O.S.No.1169 of 1988, dated 14.7.1997, on the file of Additional District Munsif, Pudukkottai.

For Appellants	:Mr.H.Arumugal
Ist Respondent	:Died
For Respondents 2,3,5 and 6	: No appearance
For Respondents 4 and 7 to 11	:Mr.K.C.Maniyarasu

JUDGMENT

The Second Appeal is filed against the judgment and decree made in A.S.No.32 of 1998, dated 28.4.2000, on the file of Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai, reversing the judgment and decree made in O.S.No. 1169 of 1988, dated 14.07.1997, on the file of Additional District Munsif, Pudukkottai.

2.The plaintiff in a suit for declaration of prescriptive title and injunction is the appellant. The suit was decreed by the trial Court only in respect of item No. 2 and 3. The appeal filed by the



defendants 2 to 5 was allowed and the suit was dismissed in its entirety by the First Appellate Court. Aggrieved by the same, the plaintiff is before this Court.

3. According to the appellant/Plaintiff, the suit property was an ancestral property and he has been in possession and enjoyment of the same for several decades and prescribed title by adverse possession. It was claimed by the plaintiff that in the year 1957, the first defendant attempted to claim title over the suit property by claiming that he had purchased the suit property from Ramasamy Udayar. The said Ramasamy Udayar said to have taken paper delivery of the suit property without disturbing the plaintiff's physical possession and hence, the claim of the first defendant was resisted by the plaintiff. Thereafter, the first defendant handed over his title document and renounced his claim over the suit property. Accordingly, the plaintiff has been in continuous and uninterrupted possession of the suit property for more than the statutory period and prescribed his title. The first defendant and other defendants colluded together and brought about sham and nominal documents of sale, as if the first defendant sold the suit property to the defendants 2 to 4 and the same will not have effect in law. The defendants made an attempt to interfere with the plaintiff's possession over the suit property and hence, he



was constrained to file the suit for declaration of adverse title and for consequential injunction.

4.The first defendant filed a written statement and denied the claim of the plaintiff's title and possession over the suit property. It was his case that the suit property originally belongs to one Ramasamy Udayar. He filed a suit against one Palani and Mari of Mudukulathoor Village in O.S.No.491 of 1949, on the file of District Munsif Court, Thanjavur and obtained a decree. When the suit property was brought in Court Auction Sale in execution of the said decree, the above said Ramasamy Udayar purchased the same in Court Auction Sale and thereafter, he possessed and enjoyed the same. The first defendant under the sale deed, dated 18.07.1959 purchased the suit property from Ramasamy Udayar for valid consideration and he has been in possession and enjoyment of the same from the date of purchase. Thereafter, the first defendant sold the suit property to the defendants 2 to 4 on 21.11.1988. Thus claiming title as well as possession over the suit property, the defendants resisted the suit.

5.The fifth defendant is the pendente lite purchaser of the suit property from the second defendant. He also filed a written statement supporting the stand of the other defendants.



6.The plaintiff was examined as P.W.1 and two other witnesses were examined on his side as P.W.2 and P.W.3. On behalf of the plaintiff, 29 documents were marked as Ex.A1 to Ex.A29. On behalf of the defendants, six witnesses were examined as D.W.1 to D.W.6 and 31 documents were marked as Ex.B1to Ex.B31.

7.The trial Court, on appreciation of oral and documentary evidence available on record, granted a decree for declaration of adverse title and injunction in respect of item No.2 and 3 of the suit property namely New S.No.335/3A and 335/C. Aggrieved by the same, the defendants 2 to 5 preferred an appeal in A.S.No.32 of 1998. Along with the First Appeal,the defendants 2 to 4 also filed an application for raising additional evidence in I.A.No.3 of 1999. The First Appellate Court considered the said application along with the appeal and allowed the same and permitted the defendants 2 to 4 to mark Ex.B32 and Ex.B33 namely, Adangal Extract for the Fasli year 1385 and the Settlement Register. The Ist Appellate Court, on consideration of evidence available on record, reversed the findings of the trial Court and allowed the appeal and consequently, the suit filed by the plaintiff was dismissed. Aggrieved by the same, the plaintiff is before this Court.

8.This Court, at the time of admission, formulated the



the additional evidence produced by the defendants. The learned counsel further submitted that the possession of the appellant was admitted by the fifth defendant in his pleadings. Further, the witness examined by the defendants also admitted the possession of the appellant as care taker of the suit properties and in such circumstances, the First Appellate Court had committed a serious error in negating the prayer for declaration of prescriptive title.

10. It is the specific case of the appellant/plaintiff that though the first defendant's predecessor-in-title Ramasamy Udayar purchased the suit property in Court Auction Sale under Ex.B30, he failed to take physical possession of the suit property and the physical possession of the suit property remains with the appellant. In view of the sale in favour of Ramasamy Udayar under Ex.B30 and subsequent sale deed executed by Ramasamy Udayar in favour of the first defendant under Ex.A1, the plaintiff by virtue of his alleged physical possession over the suit property, sought for declaration of adverse title and for consequential injunction. As per the description found in the plaint schedule, the suit property is an agricultural punja land. In case of agricultural land, best evidence to prove the possession is the Adangal and chitta extracts. The plaintiff who claims that he has been in physical possession of the suit property for number of decades, failed to produce the



revenue documents namely, the chitta and adangal extract of the suit property to prove his possession for more than the statutory period. Further Ex.A8 to Ex.A14 are the kist receipts for the Fasli years 1372 to 1382 relevant to the years 1964 to 1974,. The kist receipts produced by the plaintiff under Ex.A8 to Ex.A14 relevant to the years 1964 to 1974 stand in the name of the first defendant. If the plaintiff is in hostile possession of the suit property by denying the title of the first defendant, absolutely there was no occasion for him to pay the kist in the name of the first defendant. Therefore, Ex.A8 to Ex.A14 kist receipts produced by the plaintiff in the name of first defendant destroy the case of adverse title set up by the plaintiff. The learned counsel for the appellant, by taking this Court to Ex.A4 to Ex.A6, namely, UDR Patta in the name of the plaintiff and kist receipts Ex.A5 and Ex.A6, submitted that those documents will advance the case of the plaintiff's possession over the suit property. Ex.A4, Ex.A5 and Ex.A7 were dated 21.11.1984, 27.5.1982 and 17..4.1987. All these documents are well within the 12 years immediately preceeding the presentation of the plaint. Therefore Ex.A4, Ex.A5 and Ex.A7 would not help the plaintiff to prove his alleged possession for 12 years immediately prceeding the presentation of the plaint. Ex.A6 is the kist receipt which came into existence subsequently to the filing of the suit and hence, the same cannot be taken into consideration. Ex.A2 is



the Settlement Patta produced by the plaintiff. However, in the said document, the name of the pattadhar is not mentioned in the relevant column. However, in column No.4 meant for source of irrigation, the name of Sadayan, the father of the plaintiff was inserted by pencil as against S.No.335/3. Therefore, the Ist Appellate Court doubted the said document and rejected the same. In these circumstances, the plaintiff failed to produce any acceptable documentary evidence to prove his physical possession for more than the statutory period. 'As mentioned earlier, Ex.A8 to Ex.A14 Kist receipts produced by the plaintiff in the name of the first defendant destroy the case of hostile possession, claimed by the plaintiff.

11.The learned counsel for the appellant by taking this Court to the evidence of D.W.1 to D.W.3, submitted that those witnesses admitted that the plaintiff supervised the suit property on behalf of the first defendant. It is pertinent to mention that the first defendant filed a written statement denying the possession of the plaintiff over the suit property. The defendants side witness D.W.1 to D.W.3 only mention that the plaintiff supervised the suit property as care taker for the first defendant. In such circumstances, the Care Taker's possession cannot be treated as his own possession and the same is only on behalf of his principal. The learned counsel



for the appellant also submitted that even if the plaintiff's claim for adverse title is negated in view of the admission made by D.W.1 to D.W.3, the settled possession of the plaintiff cannot be disturbed and he is entitled to limited injunction. It is settled law that care taker's possession would not amount to his own possession and it is only on behalf of his principal and therefore, the Care Taker is not entitled to maintain a suit for injunction against the original owner/principal (In this regard reference may be had to ***A.Shanmugam .vs.Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*** reported in ***2012 (6) SCC 430***). In view of the said settled position, the plainiff cannot take advantage of the admissions made by the defendants that the plaintiff had supervised the suit property on behalf of the first defendant and maintain a suit for limited injunction. Therefore, the said contention made by the learned counsel for the appellant is also rejected.

12.In view of the discussion made earlier, this Court concurs with the findings rendered by the First Appellate Court that the plaintiff has failed to prove his adverse title by leading cogent evidence. The said conclusion reached by the First Appellate Court is based on the documents produced by the plaintiff namely, Ex.A8 to Ex.A14 and hence it requires no interference by this Court.



13. The learned counsel for the appellant also submitted that the First Appellate Court while allowing the additional evidence filed by the defendants, failed to afford an opportunity to cross examine them with regard to the additional evidence produced by them. Ex.B32 and Ex.B33 are Adangal Extract in the name of the first defendant and Settlement Register stand in the name of first defendant produced by the defendants before the First Appellate Court. This Court, without referring to the additional evidence Ex.B32 and Ex.B33, based on the evidence already on record before the trial Court, has come to the conclusion that the plaintiff has failed to prove adverse title over the suit property. Hence, the additional document produced by the defendants are not necessary to dispose of the appeal. When Ex.B32 and Ex.B33 will not have any impact on the final conclusion reached by this Court, there is no need to afford an opportunity to the appellant to cross-examine the defendants with regard to the said additional evidence. Hence, the request made by the learned counsel for the appellant for remand of the case for cross examination of the defendants with regard to Ex.B32 and Ex.B33 is also rejected. Accordingly, the substantial questions of law formulated at the time of admission are answered against the appellants and in favour of the defendants.



14. In the result, the Second Appeal is dismissed. There is no order as to costs.

05.06.2024

Index:Yes

Internet:Yes

NCC:Yes

vsn

To

1. The Additional District Judge-cum-Chief Judicial Magistrate,
Pudukkottai.
2. The Additional District Munsif,
Pudukkottai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1175 OF 2001

05.06.2024