



S.A.Nos.137 & 138 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2023

PRONOUNCED ON : 04.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.137 & 138 of 2002

S.A.No.137 of 2002

- 1.M.Veerammal (died)
- 2.P.Nageswari
- 3.M.Rajendran (died)
- 4.M.Rengamani
- 5.M.Uma Krishnaveni
- 6.M.Murugesan
- 7.M.Ramalingam
- 8.M.Premalatha
- 9.M.Prabakaran
- 10.V.Akila
- 11.Sarojini
- 12.Sangeetha
- 13.Sivabalaji

(Appellants 2 to 10 are brought on record as legal heirs of the deceased sole appellant vide order dated 17.04.2017 in C.M.P.(MD)No.9907 & 9908 of 2016 in S.A.No.137 of 2002)

(Appellants 11 to 13 are brought on record as legal heirs of the deceased third appellant vide order dated 24.01.2020 in C.M.P.(MD)No.7823 of 2019 in S.A.No.137 of 2002)

... Appellants

vs.



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- 1.C.Periyasamy (died)
- 2.Parvathi
- 3.Chithra
- 4.Ganesan
- 5.Kannan
- 6.Mahalatchumi
- 7.Dhanalatchumi

(Respondents 2 to 7 are brought on record as legal heirs of the deceased R1 vide order dated 03.09.2012 in M.P.Nos.1 to 3 of 2012 in S.A.No.137 of 2002)

... Respondents

Prayer: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.09.2001 in A.S.No.132 of 1999 on the file of the Principal Subordinate Judge, Dindigul partly reversing the judgment and decree dated 13.07.1998 in O.S.No.638 of 1995 on the file of the II Additional District Munsif, Dindigul.

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- 1.M.Veerammal (died)
- 2.Rajendran
- 3.Murugesan
- 4.Ramalingam
- 5.Ramalingam
- 6.Prabakaran

... Appellants

(Memo dated 17.04.2017 to the effect that A1 died and A2 to A6 are legal heirs of deceased A1 is recorded vide court order dated 17.04.2017 in S.A.No.138 of 2002)

... Appellants

vs.



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- 1.C.Periyasamy (died)
- 2.Parvathi
- 3.Chithra
- 4.Ganesan
- 5.Kannan
- 6.Mahalatchumi
- 7.Dhanalatchumi

(Respondents 2 to 7 are brought on record as legal heirs of the deceased R1 vide order dated 03.09.2012 in M.P.Nos.1 to 3 of 2012 in S.A.No.138 of 2002)

... Respondents

Prayer in S.A.No.138 of 2002: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.09.2001 in A.S.No.146 of 1999 on the file of the Principal Subordinate Judge, Dindigul reversing the judgment and decree dated 13.07.1998 in O.S.No.644 of 1995 on the file of the II Additional District Munsif, Dindigul.

In both appeals,

For Appellants : Mr.B.Ramanathan

For Respondents : Mr.H.Lakshmi Shankar for R2 to R7

JUDGMENT

The deceased Veerammal, appellant in S.A.No.137 of 2002 filed a suit against the deceased Periyasamy in O.S.No.638 of 1995 before the II Additional District Munsif, Dindigul for declaration and injunction.



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After trial, the trial Court decreed the suit. Aggrieved by the same, the deceased Periyasamy filed an Appeal Suit in A.S.No.132 of 1999 before the Principal Subordinate Judge, Dindigul. The appellate Court partly reversed the order of trial Court. Aggrieved over the same, the deceased Veerammal filed the appeal in S.A.No.137 of 2002.

2. The deceased Periyasamy filed a suit against the deceased Veerammal in O.S.No.664 of 1995 before the II Additional District Munsif, Dindigul for declaration and injunction. After trial, the said suit was dismissed. Therefore, the deceased Periyasamy filed an Appeal Suit in A.S.No.146 of 1999 before the Principal Subordinate Judge, Dindigul. The appellate Court reversed the order of the trial Court and decreed the suit filed by the deceased Periyasamy. Challenging the same, the deceased Veerammal filed the appeal in S.A.No.138 of 2002.

3. For the sake of convenience, the deceased Veerammal is referred as the appellant and the deceased Periyasamy is referred as the respondent as per their ranking in S.A.No.137 of 2002.



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4. Since the appellant and the respondent filed suits for declaration and injunction as against each other, survey number of the suit property in both suits is one and the same and only the extent varies, trial Court tried both suits together and passed a Common Judgment, against which, the respondent filed appeals before the first appellate Court. Before the first appellate Court, both the appeal suits were heard together, one appeal was allowed and another was partly allowed. Since the present appeals are arising out of the same issue, both the appeals are heard together and a Common Judgment is passed.

5.1. The case of the appellant as per the plaint in O.S.No.638 of 1995 and the written statement in O.S.No.664 of 1995 is that the suit property originally belonged to one Ariyanachi Ammal and she sold the property under registered sale deed dated 07.05.1959 to one Karuppaiah Servai. The said Karuppaiah Servai sold the property under registered sale deed dated 15.07.1960 to one Alagammal. From the said date onwards, Alagammal enjoyed the property by paying taxes. Alagammal leased out the property on 18.06.1963 to one Alamelu Ammal for a sum



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of Rs.1,500/-. Subsequently, she redeemed the property on 04.02.1966 and took back the possession of the property. On 30.11.1966, she mortgaged the property to one Kaliyappan for a sum of Rs.3,500/-. Since Kaliyappan died, the legal heirs of Kaliyappan made over their mortgage right to the appellant on 10.03.1980. Thereafter, to recover the mortgage amount, a suit in O.S.No.2077 of 1973 was filed and Execution Proceedings were initiated through EP.No.311 of 1980. In order to pay the amount as ordered in Execution Petition and for personal family expenses, Alagammal sold the suit property to the appellant on 03.11.1980. From then onwards, the appellant is in possession and enjoyment of the property by paying house tax and without objection or interference of anybody.

5.2. The extent of the suit property as mentioned in the plaint in O.S.No.638 of 1995 is east - west 60 feet and north-south 50 feet. In the property, there is a tiled house on the western side. The eastern and northern sides of the property is a vacant space used to keep the cattle and store the cattle feeds. Originally, the property was surrounded by



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compound wall and prior to the purchase of the property by the appellant, the compound wall collapsed. The appellant is enjoying the house property with vacant space. The respondent at the end of July 1995, asked the appellant to sell the property. Since she refused to do so, with an intention to grab the property, from the month of August 1995, the respondent is disturbing her possession. Hence, the suit in O.S.No.638 of 1995 for declaration and injunction.

6. The case of the respondent as per the plaint in O.S.No.664 of 1995 and the written statement in O.S.No.638 of 1995 is that the suit property originally belong to one Pappammal. She sold the property to one Ramasamy Iyer under registered sale deed dated 13.05.1959. From Ramasamy Iyer, the respondent purchased the suit property under registered sale deed dated 23.01.1987. From the said date, he was in enjoyment of the property and except him, no other person is entitled to the suit property mentioned in O.S.No.664 of 1995. The appellant is having property to the south of his property, which was measured and embedded survey stones under Natham UDR Scheme. Firewood trees



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are present in the vacant suit property. The appellant asked the respondent to sell the property. Since the respondent denied it, the appellant attempted to encroach the property by removing firewood trees. Hence, the suit in O.S.No.664 of 1995.

7. Based on the pleadings, the trial Court framed the following issues in O.S.No.638 of 1995.

- "(i) Whether the suit property belong to the plaintiff?"*
- (ii) Whether the plaintiff is in enjoyment of the suit property?"*
- (iii) Whether the plaintiff is entitled for relief of declaration and injunction?"*
- (iv) What are the relief the plaintiff is entitled to?"*

8. Based on the pleadings, the trial Court framed the following issues in O.S.No.664 of 1995.

- "(i) Is the legal owner of the suit property is the plaintiff or the defendant?"*
- (ii) Is the suit is bad for misjoinder of parties?"*
- (iii) Is the plaintiff is entitled to the suit property through ... adverse possession?"*
- (iv) Whether the plaintiff is entitled for relief of declaration and injunction as against the defendants?"*
- (v) What are the other reliefs the plaintiff is entitled to?"*



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9. After trial, the II Additional District Munsif, Dindigul decreed the suit filed by the appellant in O.S.No.638 of 1995 and dismissed the suit filed by the respondent in O.S.No.664 of 1995 under a Common Judgment dated 13.07.1998. Challenging the same, the respondent filed appeals in A.S.Nos.132 & 146 of 1999 before the Principal Subordinate Judge, Dindigul. The first appellate Court after hearing both the appeals, allowed the appeal in A.S.No.146 of 1999 and decreed the suit in O.S.No.664 of 1995 filed by the respondent and allowed the appeal in A.S.No.132 of 1999 in part. Challenging the Judgment and decrees passed by the first appellate Court, the appellant is before this Court.

10. While admitting the appeals, this Court has formulated the following substantial questions of law on 12.02.2002.

"(i) Whether the Judgment and decree of the first appellate Court in partly reversing the decree and Judgment of the trial Court regarding the vacant site is legally sustainable inasmuch as the vacant site including the house has been mentioned in Exs.A1 to A5 and in Exs.A7 and A8?

(ii) Whether the Judgment and decree of the first appellate Court in partly reversing the Judgment and decree of the trial Court regarding the vacant site is legally sustainable in view of the Commissioner's Report as well as admission by the respondents regarding possession of the vacant site by the



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appellant for more than 40 years?

(iii) Whether the Judgment and decree of the first Appellate Court in partly reversing the Judgment and decree of the trial Court in rejecting the evidence of PW2 and PW3 without any basis?"

11. Since the substantial questions of law are interlinked with each other, they are discussed commonly.

12. The learned counsel appearing for the appellant would submit that though the trial Court rightly appreciated the pleadings, oral and documentary evidence produced by the appellant and decreed the suit filed by her and dismissed the suit filed by the respondent, the first appellate Court wrongly reversed the Judgment and decree passed by the trial Court. Further, he would submit that the description of suit property in Exs.A1, A3 to A5 and A7 would clearly establish the case of the appellant and the right and interest of the predecessors in title and their continuous possession and enjoyment of the property. The predecessors in title enjoyed the property by leasing it out. They also redeemed the same. Subsequently, there were many sale deeds and in all the documents, in the schedule of property, invariably, same extent is



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mentioned. The first appellate Court wrongly held that north-south measurement has been given wrongly and that instead of 25 feet, it is mentioned as 50 feet. The first appellate Court failed to consider the evidence of PW2 for the reason that he is a relative of the respondent and also erroneously accepted the evidence of RW3, who is a joint witness and reversed the Judgment solely based on the evidence of RW3 and the Commissioner Report. Even the Commissioner Report supports the case of the appellant. The appellant was in continuous possession and enjoyment of the suit property including the vacant site. The first appellate Court has not properly appreciated the oral and documentary evidence and it failed to consider the documents of the appellant regarding her possession and enjoyment of the entire suit property. Therefore, the Judgment and decrees passed by the first appellant Court are liable to be set aside and the Judgment and decrees of the trial Court are liable to be restored.

13. The learned counsel for the respondent would submit that though the trial Court failed to appreciate the oral and documentary



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evidence such as evidence of RW3, Commissioner Report and Plan Exs.C1 and C2, the first appellate Court as a fact finding Court re-appreciated the evidence and reversed the Judgment and decrees passed by the trial Court and allowed the appeals. Further, he would submit that the full extent of the suit property belong to Angammal and through Nagammal, Angammal had two granddaughters namely, Pappammal and Ariyanachi Ammal. The appellant also admitted the relationship of Angammal, Nagammal, Pappammal and Ariyanachi Ammal. Angammal executed sale deed in favour of Pappammal for a portion of the property and rest of the property was encroached by Ariyanachi Ammal. Pappammal sold the suit property to Ramasamy Iyer on 13.05.1959, from whom, the respondent purchased and is in enjoyment of the same. Further, he would submit that the appellant did not prove the boundaries recited in her documents. The trial Court failed to consider the evidence of RW3 who was the tenant of the respondent's property, RW2 who is the Government Officer in the Survey Department and the Advocate Commissioner's Report which stated that since the property is natham survey, they did not have a proper document to give the exact extent.



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The suit properties mentioned in both the suits originally belong to Angammal. Ariyanachi Ammal and Pappammal were the granddaughters of Angammal. The appellant got the property from the subsequent purchasers of Ariyanachi Ammal and the respondent got the property from the subsequent purchaser of Pappammal. The same was rightly appreciated by the first appellate Court. The first appellant Court rightly held that the in Ex.A1, north-south measurement was wrongly indicated as 50 feet instead of 25 feet. Hence, there are no merits in the present appeals and more so ever, there is no substantial question of law involved in these appeals. Both the appeals are liable to be dismissed.

14. Heard both sides and perused the materials available on record.

15. The suit property mentioned by the appellant in her suit and the suit property mentioned by the respondent in his suit are covered in natham survey no.448. The appellant has shown the measurement of the properties as east-west 60 feet and north-south 50 feet in paragraph No.6 of the plaint. According to the appellant, there is a tiled house on the



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western side of the property and there is a vacant space on the eastern and northern sides of the property. The appellant and her predecessors were in possession and enjoyment of the property. The appellant has stated that that they are keeping cattle and cattle feeds in the vacant space and that from 1955 till 1980, compound wall was existing on northern, southern and eastern sides of the property and prior to the purchase of the property by the appellant, the compound wall collapsed. The appellant has alleged that in the year 1995, the respondent asked her to sell the vacant site, since she refused, the respondent tried to encroach the property.

16. On the side of the appellant, three witnesses were examined as PW1 to PW3 and 53 documents were marked as Exs.A1 to A53, in which, Ex.A11 is the registered sale deed dated 03.11.1980 executed by Alagammal in favour of the appellant for valuable consideration of Rs. 6,500/-. In Ex.A11, the description of property is mentioned as the vacant site and tiled house in Natham Survey No.448 with east-west 60 feet and north-south 50 feet. Except the southern boundary of the



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property, all other boundaries are Natham roads, land and streets. The southern boundary is mentioned as Angammal's vacant site. Even in the title deeds prior to Ex.A11, same boundaries have been mentioned. From the year 1980, the boundaries recitals in all the sale deeds and lease deeds are same. The Advocate Commissioner has also stated that in front of appellant's house, there is a vacant space.

17. However, the respondent purchased the property only in the year 1987 under Ex.B3 from one Ramasamy Iyer. The schedule of property as stated in his sale deed Ex.B3 and plaint is the vacant site in Natham Survey No.448 with east-west 60 feet and north-south 25 feet.

18. The vacant space to the north of the appellant's property is mentioned as suit property in the suit filed by the respondent. Pending suit, Advocate Commissioner was appointed in O.S.No.664 of 1995 on an application filed by the respondent. Advocate Commissioner in his Report and Plan has clearly stated that there are vacant spaces in the eastern and northern side of the appellant's house. According to him,



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east-west extent 60 feet as indicated by the appellant and respondent in their respective suits is available. However, the extent of north-south measured at 76 feet is not with either of their documents.

19. However, the appellant's documents are from the year 1950 and her sale deed is of the year 1980, whereas, the respondent's documents are only from the year 1954 and his sale deed is of the year 1987. Hence, the appellant's documents are prior to the respondent's documents. In the appellant's documents, it is shown that, adjacent to the house, northern and eastern sides are vacant. The appellant and her predecessors were enjoying the property physically by paying house taxes from the year 1974 till the filing of the suit and also by leasing out the property, which is supported by documentary evidence. Ex.A12 to Ex.A51 are house tax receipts and electricity bills, which clearly show that the appellant and her predecessors were continuously enjoying the house situated in the suit property and naturally the Commissioner's Report shows that they are also enjoying the vacant site. Therefore, the case of the appellant is more probable.



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20. The respondent's suit property is shown as a vacant site. Even as per the Commissioner's Report and the respondent's own pleadings and evidence, there were firewood trees growing in the property. The respondent has not produced any material to show that he is in possession and enjoyment of the property. Further, the appellant has got right and title even prior to the purchase of the property by the respondent. Admittedly, the suit property comes under natham survey No.448. Therefore, the only question is as to whether the respondent's predecessors were having right and title and they were in possession and enjoyment of the property.

21. The respondent has filed a suit in O.S.No.664 of 1995 and as the plaintiff in that suit, he has to prove his case. However, he failed to do so. Whereas, the appellant, in her suit in O.S.No.638 of 1995, has produced all the documentary evidence to prove her title and enjoyment. Since the appellant is residing in the house in the suit property, it is possible for her to use those vacant lands also. Further, the appellant has stated that originally there was a compound wall and that collapsed even



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prior to her purchase. The respondent has also not denied the same.

Therefore, in view of Exs.A1, A3 to A5 and A7 and A11 and also considering the other oral and documentary evidence, it could be concluded that the appellant has established her title.

22. The first appellant Court reversed the Judgment of the trial Court by giving a finding that in the appellant's document north-south measurement has been wrongly mentioned as 50 feet instead of 25 feet. It is not in one document the measurement has been mentioned as 50 feet. In all the documents of the appellant, namely, Ex.A1, A3 to A5, A7 and A11, even from the year 1950, the measurement has been mentioned only as 50 feet. As already stated, the case of the appellant is that in her property, there is a house and she is residing there and enjoying the property. If at all, the case of the respondent is that he is entitled to a portion of the property, since both the suit properties comes under Natham Survey No.448, he could have filed a suit for partition. Further, admittedly, the respondent has filed only the documents Exs.B1 to B3 and he has got no patta for the suit property. Even in the first document



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Ex.B1 which is of the year 1954, there is no patta. According to the respondent, he purchased the suit property in the year 1987 and all these years, the respondent or his predecessors have not taken any steps to get patta. Therefore, as a plaintiff, the respondent in his suit has not established that his vendor and predecessors are having right and title over the suit property. However, the appellant in her suit has proved that she is in possession and enjoyment of the property based on the sale deed. The trial Court rightly appreciated the evidence and decreed the suit filed by the appellant and dismissed the suit filed by the respondent.

23. However, the first appellate Court has wrongly re-appreciated the evidence and simply stated that, in the appellant's documents, instead of 25 feet, it is mentioned as 50 feet. The said finding is erroneous. Even the plan Ex.B5 filed by the respondent in his suit is only supporting the case of the appellant. The appellant in her plaint in paragraph No.6 has clearly stated that in her suit property, the northern and eastern sides are vacant and that there is no fencing on the northern side of the appellant's house for dividing the property of the appellant and



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respondent. As already stated except Exs.B1 to B3, the respondent has not produced any other evidence to show that his predecessors were having title and right and they were enjoying the property without interruption of anybody. Therefore, the respondent has not proved his case.

24. The first appellate Court based on the evidence of RW3 has given a reversed finding. It is well settled proposition of law that unless contrary to the documentary evidence is proved, oral evidence cannot be given effect to. Further, RW3 is not residing in the suit property of the respondent. Admittedly, the suit property shown in the respondent's plaint is only a vacant site and he has not produced any other materials to show that he is enjoying the property. No doubt, for the vacant site, possession follows title. However, in this case, the said principle will not apply because, the appellant claims title by way of documents that are prior to the documents produced by the respondent. The appellant has stated that the suit property in her plaint and the plaint of the respondent are the appellant's property and she has produced oral and documentary



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evidence including PW2 in order to prove her case. The first appellate Court rejected the evidence of PW2 since she was a relative of the respondent and since there was no talking terms with the respondent. Though PW2 was not in talking terms with the respondent, no adverse remarks were elicited from her. Unless it is proved that PW2 has vengeance on the respondent, her evidence cannot be simply ignored. Based on the evidence of PW1 & PW2 and Exs.A1 to A51, this Court finds that the trial Court rightly appreciated the evidence on record and granted a decree in favour of the appellant, whereas, re-appreciation of facts by the first appellate Court is erroneous. Therefore, substantial questions of law formulated by the Courts are existing and as discussed above, the substantial questions of law are answered in favour of the deceased appellant Veerammal.

25. In the result, the Second Appeals are allowed. The judgment and decree dated 28.09.2001 in A.S.Nos.132 and 146 of 1999 on the file of the Principal Subordinate Judge, Dindigul are set aside and the judgment and decree dated 13.07.1998 in O.S.Nos.638 and 664 of 1995



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on the file of the II Additional District Munsif, Dindigul are confirmed.

No costs.

04.10.2024

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To

1.The Principal Subordinate Judge, Dindigul.

2.The II Additional District Munsif, Dindigul

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



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P.VELMURUGAN, J.

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Pre-Delivery Judgment in
S.A.Nos.137 & 138 of 2002

04.10.2024