



S.A.No.40 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **13.08.2024**

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.No.40 of 2004

1.Azhagammal
2.Saraswati
3.Kalaimani

... Defendants/Respondents/
Appellants

Vs.

Thootta Rajagopala Chettiar Charity,
Trichy, rep. by its Trustees,
Periyakadai Street,
Trichy-8.

1.Ramanujam Chettiar
2.Balaratinam
3.Muralidaran

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 19.03.2004 and made in A.S.No.119 of 2001 on the file of the Principal Subordinate Court, Trichy modifying the judgment and decree in O.S.No.910 of 1980, dated 07.09.2001, on the file of the District Munsif Court, Trichy.

For Appellants : Mr.P.Thiyagarajan

For Respondents : No appearance



JUDGMENT

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The appellants, who are defendants in the suit, filed the present appeal against the judgment and decree, dated 19.03.2004, made in A.S.No.119 of 2001, on the file of the Principal Subordinate Court, Trichy, modifying the Judgment and Decree in O.S.No.910 of 1980, dated 07.09.2001, on the file of the District Munsif Court, Trichy.

2, For the sake of convenience, the appellants and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiffs respectively.

3. The plaintiffs 4 to 6 and three others are the representatives of the "Thootta Rajagopala Chettiar Charity", Trichy. The plaintiff filed a suit in O.S.No.910 of 1980 before the District Munsif Court, Trichirappalli, for declaration that the plaintiffs are the owner of the properties and to deliver vacant possession of 'A & B' schedule properties to the plaintiff and to pay a sum of Rs.540/- being the arrears of rent from September 1976 to August 1979 and for damages for use and occupation of 'A' schedule property and to pay future mense profits in respect of 'B' schedule property till the date of delivery and for costs.



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4. On analyzing documentary and oral evidence, the learned District Munsif, Trichirappalli, has partly allowed the Suit in O.S.No. 910 of 1980 directing the defendants to pay a sum of Rs.540/-, as arrears of rent, to the plaintiffs. Aggrieved over the same, the plaintiffs have filed an appeal in A.S.No.119/2001, before the Sub-Court, Trichirappalli. The learned Sub-Judge, Trichy, on careful considering the materials on record, has allowed the appeal in-part by modifying the Judgment Decree of the trial Court in respect of the 'B' schedule property and confirmed Judgment of the trial Court in respect of other remedies. Aggrieved over the same, the defendants have filed the present appeal.

5. The case set-up by the plaintiffs in the plaint is as under:-

(i) The defendants are the tenants under the plaintiffs in respect of the 'A' schedule property on a monthly rent of Rs.15/- payable on or before 5th of every succeeding English Calendar month, apart from payment of Municipal Tax for the same. The defendants committed willful default in payment of rent. The plaintiffs'-Trust filed an application for eviction of the defendants from the 'A' schedule property in R.C.O.P.No.379/1961, on the file of the Rent Controller, Tiruchirappalli. The defendants contested the petition. Thereafter, the



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plaintiffs had also filed a Suit in O.S.No.1451/1966, on the file of the District Munsif Court, Tiruchirappalli, for recovery of rent arrears due for a sum of Rs.1,140/-. The said suit was **dismissed** by the trial Court after contest by the defendants.

(ii) As against the dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.489 of 1972 before the Sub Court, Trichy. The defendants opposed the appeal. The appeal was allowed and a decree had been passed against the defendants. The defendants are bound by the said Judgment and Decree and the same has become final. Thereby the defendants estopped from questioning the right, title of the plaintiffs as well as their liability to pay rents. Even thereafter, the defendants have not paid the rents due. Though large sums are due by way of rent, the plaintiffs restricted to claim arrears of rent only for 3 years prior to this date. The defendants obviously taking advantage of their occupation of 'A' schedule property, as a tenant, annexed the 'B' schedule property, adjoining 'A' schedule property, which was not at all leased out to him. The plaintiff's Trust is a Religious Charitable Trust and is exempted from the application of the Rent Control Act. Therefore, the plaintiffs duly terminated the tenancy by issuing notice to quit, dated 11.08.1979. The plaintiffs called upon the defendants to pay rent arrears and vacate the properties before 01.09.1979.



6.The defence set-up by the defendant in the written statement is as under:-

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(i) The defendant had filed written statement denying the averments made in the plaint. He is the absolute owner of the entire properties and the patta is also in his name. The defendant had constructed a pucca building in the year 1947, by spending more than Rs.2,000/- in the suit property, after getting sanction from the Municipality and he had been paying Municipal Taxes till now, for more than 30 years. He acquired title to the suit properties by adverse possession and prescription for long over the statutory period. He has been in possession and enjoyment of the suit properties in his own right and title.

(ii) The defendant exercised his rights by creating mortgage over the properties. He never paid any rent to the plaintiffs' Trust. There is no question of resjudicata would arise. The plaintiff had no right to claim any rent. No question of payment of any damages for use and occupation, as claimed in the plaintiff would arise. He is not at all liable to pay any amount, as damages for use and occupation. He is not bound to deliver possession of 'B' schedule property. The plaintiff had no claim over the same. The proposed parties, who are supplemental plaintiff have no right in the suit properties. The suit is



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barred under the provisions of the Trust Act and prayed for dismissal of the suit.

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7. The plaintiff filed a reply to the counter statement stating that pucca constructions have been built in 1947 spending Rs.2000/- by the defendant is incorrect. The claim of adverse possession is unsustainable besides being false. The defendant's claim that the property belongs to him and no rent can be demanded is wholly mischievous besides being false. Though the defendant liable to pay rent arrears for several years, the plaintiff restricted to three years prior to the suit and the defendant liable to pay future damages for use and occupation. The defendant liable to pay the rent arrears as ascertained by the Court below for the period from 01.09.1979 till he delivers possession of 'A' schedule. The defendant is liable to deliver 'B' schedule property, which he encroached upon and mesne profits, which is claimed from the date of plaint till delivery of possession. During the pendency of the suit, the defendant died intestate. His legal representatives have been impleaded as supplemental defendants, as per order dated 28.04.1987, made in I.A.228/1987. They are in possession and enjoyment of the suit properties by succeeding the estate of the deceased. Therefore, the plaintiff filed the suit for declaration, recovery of arrears of rent, damages and for



present and future possession.

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8. Before the trial Court, on the side of the plaintiff, the 5th plaintiff examined as P.W.1 and Exs.A1 to A18 were marked. On the side of the defendant, one Kalaimani (4th defendant) was examined as D.W.1 and Ex.B1 to B34 were marked.

9. 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, had dismissed the suit, by directing the defendants 2 to 4 to pay a sum of Rs.540/-, as arrears of rent, to the plaintiffs.

10. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiffs 4 to 6 had filed an Appeal Suit in A.S.No. 119/2001. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had modified the judgment and decree of the trial Court.

11. Challenging the said reversal judgment and decree passed by the first appellate Court, the present Second Appeal has been filed by the defendants.



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

"1) When the plaintiff having not established title still is the learned subordinate Judge right in granting a decree for item-2?

(ii) When it is settled in law that relying upon the weakness of the case of the defendant no decree can be granted still the learned Principal Subordinate Judge right in granting a decree with reference to item in the absence of any proof of title in favour of the plaintiff?"

13. Mr.P.Thiyagarajan, the learned counsel appearing for the appellants / defendants would submit that the first appellate Court has failed to exercise its jurisdiction. The appellate Court erred in holding that 'B' schedule property does not belong to the appellants/defendants by adverse possession, when the plaintiffs themselves have admitted the possession of the defendants for more than the statutory period. The appellate Court erred in holding that the defendants have to hand over the possession of the 'B' schedule property to the plaintiffs, when plaintiffs have no documents to prove



their title. The appellate Court ought to have seen that only the plaintiff has to establish his case and therefore, the burden is on the plaintiff to prove his title to the 'B' schedule property. The defendants have no liability to prove adverse possession, when the plaintiffs themselves have admitted that the defendants are in possession of the suit properties for more than the period required by law. The finding of the first appellate Court that the defendant has not proved that the schedule property belong to his joint family and therefore, is not entitled to claim adverse possession, is unsustainable and is liable to be set aside.. The first appellate Court erred in rejecting the plea of adverse possession and has held that there is no admissible documents or any relevant document to show that plaintiffs have title to the property. The first appellate Court ought to have seen that when no title proved by the plaintiffs, when the possession of the defendant/appellant admitted by the plaintiff, there is no impediment to grant the relief of adverse possession to the suit 'B' schedule property to defendants.

14. I have heard the learned counsel for the appellants and also perused the materials on record carefully. There is no representation for the respondents.



15. On perusal of Ex.A1 to 10, it is seen that Ex.A1 is the notice sent by the plaintiff to the defendant; Ex.P2 is the notice sent by the defendant to the plaintiff; Ex.P3 is the Document ordering that the arrears of rent to be paid to the plaintiff by the defendant, but the same has not proved that the building constructed in the suit property belonged to the plaintiff; Ex..A4 is the action taken document for evicting the defendant Rajagopal from the suit property; Ex.A5 is the document to prove that Rajagopal paid rent; Ex.A6 is receipt; Exs.A7 to A9 are letters written by the defendant to the plaintiff; Ex.A.10 is the order made in C.R.P.No.472 of 1965; Ex.A11 & 12 are the copy of the Judgment and Decree made in A.S.No.483 of 1968; Ex.A13 is Will; Exs.A.14 to 18 are the copies of the Judgments of various courts.

16. Ex.B1 is the construction permission given by the Trichy Municipality; Exs.B2 and B3 are the circular sent by the Municipal Commissioner, Trichy, to the 1st defendant; Ex.B4 to B13 are the Property Tax paid by the 1st defendant; Exs.P14 to P20 are the Judgment and decree of various Courts; Ex.P21 to 34 are the House Tax Receipts paid by the 1st defendant.

17. As regards 'A' schedule property is concerned, from the perusal of the records it is seen that "A" schedule property belongs to



the plaintiff's Charity viz., "Thootta Rajagopala Chettiar Charity", Trichy. It is not the case of the defendant that he is the owner of the 'A' schedule property. But, it is the case of the defendant that he is in adverse possession of the property. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse



possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. In this case there were litigations and exchange of notices between the parties. Hence, the question of adverse possession does not arise.

18. As regards 'B' Schedule property is concerned, it is seen from the records that plaintiff rented the 'A' schedule property, which is a plaint land, to the 1st defendant at Rs.15/- per month. The 1st defendant, constructed a building thereon, which is evident from Ex.B1, permission given by the Trichy Municipality for construction of the building on 19.09.1953. On further perusal of the documents it is seen that the 1st defendant paying House Tax regularly to the Municipality in his name. Further it is clear from Ex.B4 to B14 , which are of the year 1975 to 1989, that the 1st defendant paid tax during the relevant period to the Municipality, Trichy. Therefore, it is clear from the records that the 1st plaintiff rented the 'A' schedule property, and he himself build up the house thereon. Therefore, the trial Court has rightly held that 'A' schedule property belonged to the plaintiff and it was rented out to the 1st defendant, and he has to pay Rs.540/- towards rent to 'A' schedule property and I have no reason to interfere with the well considered Judgment of the trial Court. Accordingly, the



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substantial questions of law are answered accordingly.

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19. In the result, the Second Appeal is dismissed by confirming the Judgment and Decree made in A.S.No.119 of 2001, on the file of the Principal Sub-Court, Trichy. However, there shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
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To

1. The Principal Subordinate Court,
Trichy.
2. The District Munsif Court,
Trichy.
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
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