



S.A.No.301 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.301 of 2013

and

M.P.No.1 of 2013

1. Santhamma (Died)

2. Parvathamma

3. Eregowda

4. E.Savitha

5. E.Shobha

6. Vinutha

7. Basavaraju

...Appellants

[Appellants 3 to 7 were brought on record as LR's of the deceased 1st Appellant vide order of this Court dated 08.07.2022 made in CMP Nos.108, 110 & 111 of 2022 in S.A.No.301 of 2013]

Versus

1. Neelamma

2. Nanjundappa

3. Sidharaj

4. Kumar

5. Nagaraj

...Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.23 of 2009 on the file of the Subordinate Court, Hosur dated 29.10.2012 in confirming the judgment and decree in O.S.No.64 of 2002 on the file of the District Munsif Court, Denkanikottai, dated 30.04.2009.

For Appellants : Mr.C.Sai Krishnan

For R1 : M/s.B.Sasikala

for Mr.M.P.Saravanan

R2 to R5 : *Ex parte*



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JUDGMENT

This Second Appeal is filed seeking to set aside the judgment and decree dated 29.10.2012 passed in A.S.No.23 of 2009 by the learned Subordinate Judge, Hosur confirming the judgment and decree dated 30.04.2009 passed in O.S.No.64 of 2002 by the learned District Munsif Court, Denkanikottai.

2. The plaint averments in brief are as follows:-

2.1. The suit property originally belong to Rame Gowdu, son of Rame Gowdu. The Plaintiffs 1 to 3 are the legal heirs of Nanje Gowdu through his first wife Maramma and the Plaintiffs 4 to 6 are the legal heirs of Nanje Gowdu through his second wife Puttalingamma. The suit property was purchased by the father of the Plaintiffs Nanje Gowdu through a registered sale deed dated 13.10.1965 for Rs.2,500/-. From the date of purchase, Nanje Gowdu was in possession of the suit property. After his death, the legal heirs the Plaintiffs 1 to 6 had been in possession of the same. After the death of the first wife Maramma and the second wife Puttalingamma, the Plaintiffs 1 to 6 were continuing the possession of the same. They had been in possession and enjoyment of the same without any partition. Due to their avocation, they



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were residing in different places and they had been cultivating in the suit property through farm labourers by paying wages to them. The husband of the Defendant Thammaiah was requested to take care of the property as he was a relative of the Plaintiffs. Thammaiah had accordingly been maintaining the property on behalf of the family of the Plaintiffs. The Plaintiffs had been paying the wages to the workers/farm hands employed by the Thammaiah in the suit property, the husband of the Defendant. Thammaiah had handed over the yield from the crops harvested from the suit properties to the family of the Plaintiffs. While so, the Defendant claimed that patta had been issued to the Defendant and thereby denied the title of the Plaintiffs. The Defendant prevented the Plaintiffs from entering the suit property. The Plaintiffs came to know that the permission granted by the family of the Plaintiffs to the husband of the Defendant for cultivating the lands on behalf of the Plaintiffs by the Plaintiffs paying the wages to be paid to the agricultural labourers through the husband of the Defendant Thammaiah was misused by the Defendant and the said Thammaiah illegally influencing the Revenue Officials and obtained revenue records – Chitta, Patta and Adangal in favour of the Defendant which made them to deny the title of the Plaintiffs in the suit property. Merely possessing revenue records in the name of either the Defendant or her husband will not entitle the Defendant to claim title to the property. Therefore, the



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Plaintiffs had filed the suit seeking declaration of title that the suit property belong to the Plaintiffs and seeking permanent injunction against the Defendant from interfering with the Plaintiffs' peaceful possession and enjoyment of the suit property.

3. The written statement filed by the Defendant in brief are as follows:-

3.1. The Defendant deny the claim made by the Plaintiff as false and frivolous. The Plaintiffs are in no way concerned or connected either to the suit schedule property or to the Defendant. The Plaintiffs lay a false claim over the suit properties filed this vexatious suit against the defendant. The Plaintiffs are claiming the suit property on the basis of sale deed dated 13.10.1965 which is filed along with the suit. The father of the Plaintiffs conveyed the suit properties to the father of the Defendant's husband by name Munimare Gowdu. The said re-conveyance was done as the father-in-law of the Defendant and the father of the Plaintiffs wear close friends and they were relatives. There had been cordial relationship between them. Therefore the said transaction of re-conveyance was not registered. From the date of the said re-conveyance, the suit property in favour of the father-in-law of the Defendant Munimare Gowdu. He was in enjoyment of the property as



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absolute owner. After the death of the said Munimare Gowdu, the father-in-law of the Defendant, the name of the Defendant and her husband Thammanna @ Thammaiah have been properly carried out in the revenue records for the suit property. Till the date of death of the father of the Plaintiffs, either the Plaintiffs or the father of the Plaintiffs have not come forward to file any case or suit or even claim right over the suit property. After the said conveyance, the father-in-law of the Defendant enjoyed the suit property without any hindrance from any side including Plaintiffs and after the death of the said Munimare Gowdu, the son of Munimare Gowdu, the husband of the Defendant and this Defendant are in absolute possession and enjoyment of the suit property till date. The revenue authorities also granted patta to the Defendant and her husband jointly in Patta No.546 for the suit property. The Adangal and chitta are also in the name of the Defendant and her husband.

3.2. By suppressing all the facts, the Plaintiffs filed this vexatious suit against the Defendant. This Defendant deny the claim of possession by the Plaintiffs in the suit property. Also, it is equally false that the husband of the Defendant working for the Plaintiffs. Regarding this Defendant reserves her right to file separate suit for damages against the Plaintiffs for their specific allegation made against the husband of the Defendant. It is false to state that



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the husband of the Defendant is paying kist on behalf of the Plaintiffs for the suit properties. To lay false claim over the suit property, an imaginary story is pleaded by the Plaintiffs in the plaint. The Plaintiffs have to prove the averments made in the plaint strictly before this Court at the time of trial. As the Defendant and her husband are in absolute possession and enjoyment over the suit property, there is no need for them to trouble this Plaintiffs as they had stated in the plaint. Also, there is no need for this Defendant to commit any act of trespass over the suit property. The Plaintiffs are in no way connected to the suit property and have no knowledge of the sit property. They have failed to furnish the boundaries to the suit property. The suit property is to be subdivided and the details of the sub-division is not at all known to the Plaintiffs. This fact itself clearly reveals that the Plaintiffs are not in possession of the suit property and they are attempting to grab the suit property illegally from the Defendant. Also the Defendant submit that after very long years, the Plaintiffs filed the above suit on the basis of the so-called registered sale deed dated 13.10.1965 which is also not the original one. These Plaintiffs had not filed any single kist receipt for the suit property in their name. As they have no title, right and possession over the suit properties they could not file any revenue records regarding the suit properties including patta, UDR patta in their name. The Defendant is filing UDR patta and the tax



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receipts before this Court along with this written statement. There is no cause of action for filing this suit. The suit lacks merit and has to be dismissed.

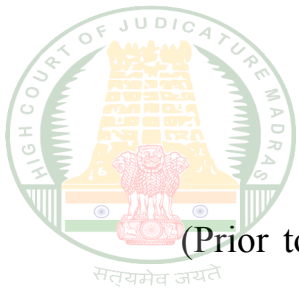
4. Based on the pleadings of both parties, the learned District Munsif-cum-Judicial Magistrate, Denkanikottai, had framed the following issues:-

(i) Whether the Plaintiffs are entitled to the relief of declaration of the title to the suit property as prayed for?

(ii) Whether the Plaintiff is entitled to the relief of permanent injunction against the Defendant?

(iii) To what relief the Plaintiffs are entitled?

5. During trial, the third Plaintiff Parvathammal had examined herself as P.W-1. The affidavit filed by the third Plaintiff Parvathammal was treated as examination-in-chief of P.W-1. On perusal of the same it is found that the plaint averments had been stated in the affidavit filed by the third Plaintiff as P.W-1 as it is. During the deposition of the third Plaintiff as P.W-1, the documents were marked as Ex.A-1 and Ex.A-2. Ex.A-1 is the registered sale deed dated 13.10.1965 in the name of the father of the Plaintiffs. Ex.A-2 is the registered mortgage deed executed by Rame Gowdu, son of Rame Gowdu in favour of the Chennappa, son of Kare Gowdu was dated 11.05.1965

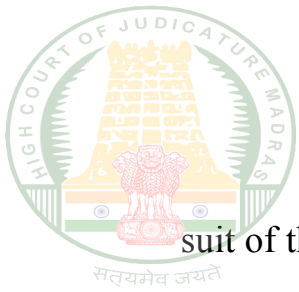


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(Prior to sale deed). One Ere Gowdu was examined as P.W-2, one Ramesh was examined as P.W-3 and one S.M.Inayathuallah was examined as P.W-4.

6. The sole Defendant Neelamma was examined as D.W-1. The affidavit filed by the sole Defendant was treated as examination-in-chief of D.W-1. One Mariyappa was examined as D.W-2, Muthe Gowdu was examined as D.W-3 and one Thottamathappa was examined as D.W-4. The documents relied by the Defendant were marked as Ex.B-1 to Ex.B-4. Ex.B-1 is the patta dated 31.05.2002 in favour of the Defendant and her husband Thammaiah. Ex.B-2 is the computer patta dated 04.06.2008 in favour of the Defendant's husband and Defendant's father-in-law. Ex.B-3 is the series of kist receipts (7 in numbers) in the name of Munimare Gowdu, the father-in-law of the Defendant. Ex.B-4 is the series of kist receipts (10 in numbers) in the name of Defendant and her husband Thammaiah. The Adangal in favour of Rame Gowdu was marked as Court document under Ex.X-1.

7. On conclusion of trial, after hearing the arguments of both parties, the learned District Munsif-cum-Judicial Magistrate, on appreciation of evidence, by judgment dated 30.04.2009 in O.S.No.64 of 2002 dismissed the



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suit of the Plaintiffs 1 to 6.

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8. Aggrieved, the Plaintiffs 2 and 3 had preferred appeal in A.S.No.23 of 2009 before the learned Sub Judge, Hosur against the Defendant as well as the Plaintiffs 1, 4 to 6. On re-appreciation of evidence, the learned Sub Judge, Hosur, by judgment dated 29.10.2012 in A.S.No.23 of 2009 dismissed the appeal. Aggrieved by the dismissal of the Appeal, the Appellants in A.S.No.23 of 2009 had filed this Second Appeal.

9. The learned Counsel for the Appellants submitted that the Appellants are the Plaintiffs 2 and 3 before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. During the pendency of this Second Appeal, the first Appellant died and her legal heirs are impleaded as Appellants 3 to 7. They are the legal heirs of Nanje Gowdu. The said Nanje Gowdu purchased the suit properties in the year 1965 through registered sale deed dated 13.10.1965. The Plaintiffs 1 to 3 are the children of Nanje Gowdu through his first wife and the Plaintiffs 4 to 6 are the children of Nanje Gowdu through his second wife. Due to their avocation, the Plaintiffs had handed over the possession to the Defendant to carry out agricultural operations by engaging labourers in the property. The Plaintiffs had been enjoying the



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property through cultivating the same by engaging labourers through
Defendant.

10. While so, in the course of time, the Defendant and her husband were alleged to have obtained revenue records transferred in their name without the knowledge of the Plaintiffs and further after a period of time, they started to object the visit of the Plaintiffs to the suit properties. Since the Defendant objected to the enjoyment of the suit property by the Plaintiffs, the Plaintiffs were forced to file a suit in O.S.No.64 of 2002 seeking declaration of title of the suit properties and also permanent injunction against Defendant. The Defendant filed written statement claiming that the property was re-conveyed to her father-in-law, Munimare Gowdu. Since they had been relatives, there was no written deed.

11. Further, it was stated in the written statement that throughout the lifetime of Nanje Gowdu, he had not exercised any right over the properties and all these years Munimare Gowdu had been cultivating in the property. While so, without any right, the sons and daughters of Nanje Gowdu had filed this vexatious suit against the Defendant. The learned District Munsif-cum-Judicial Magistrate had framed issues and in full trial on assessment of

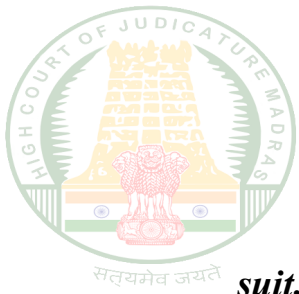


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evidence dismissed the suit in O.S.No.64 of 2002, by judgment dated 30.04.2009.

12. It is the submission of the learned Counsel for the Appellants that the learned District Munsif-cum-Judicial Magistrate and the learned Sub Judge, Hosur as Appellate Judge failed to consider the fact that revenue records cannot be considered as title to the property in the dispute. Even though the Plaintiffs had marked sale deed in the name of the father of the Plaintiffs, the suit was dismissed by the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. Ignoring the settled principles of law that the revenue records are only regarding the payment of revenue to the Government and it cannot be invoked to claim title of the property, the learned Sub Judge, Hosur as Appellate Judge had dismissed the Appeal preferred by the Plaintiffs against the dismissal by the learned District Munsif-cum-Judicial Magistrate, Denkanikottai.

13. Aggrieved by the same, the Plaintiffs before the District Munsif-cum-Judicial Magistrate in O.S.No.64 of 2002 and Appellants before the learned Sub Judge, Hosur in A.S.No.23 of 2009 had preferred this Second Appeal raising the following substantial questions of law:..



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(i) Whether the Courts below are justified in dismissing the suit, when the Plaintiffs title to the property is unimpeacheable and undeniable?

(ii) Whether revenue records could confer title upon the Defendant and whether the Courts below is right in dismissing the suit relying upon the patta and kist receipts alone without appreciating the deed of title under Ex.A-1?

(iii) Are the Courts below justified in applying the principle, “possession follows title” to dismiss the suit, when that principle aids the case of the Appellant?

(iv) When the Defendant claim to have derived title from the Plaintiffs father, are the Courts below justified in rejecting the case of the Plaintiff for declaration of the title, when the Defendant failed to prove her case of legal transfer?

14. The learned Counsel for the Appellants invited the attention of this Court to the evidence of D.W-1 which was misconstrued and misinterpreted by the learned District Munsif-cum-Judicial Magistrate, Denkanikottai, in Para.8 of the judgement. This portion of evidence is contradictory to what is available in the evidence i.e., D.W-1. Thereby, the Judgement of the learned District Munsif-cum-Judicial Magistrate, Denkanikottai in O.S.No.64 of 2002, dated 30.04.2009 is erroneous.

15. The learned Counsel for the Appellants also invited attention of this Court to the examination in chief and the affidavit filed by D.W-1 in Para.4, and during the cross-examination, she specifically denied the contents



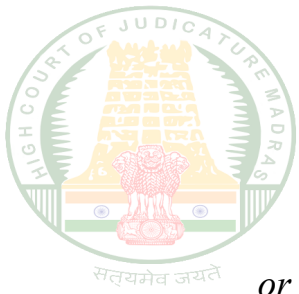
of the registered deeds. It was also not considered that the title has been transferred to the Plaintiffs. If what had been deposed by D.W-1 is true, the father-in-law ought to have approached the Court challenging the deed dated 13.10.1965. However, that was not done till the filing of the suit. Therefore, the judgment of the learned District Munsif-cum-Judicial Magistrate, Denkanikottai in O.S.No.64 of 2002, dated 30.04.2009 is erroneous and this Second Appeal has to be allowed.

16. In support of his contention, the learned Counsel for the Appellants relied upon the following citations:

16.1. In the case of ***T.R.Dinakaran -vs- The Revenue Divisional Officer, Aruppukottai*** reported in ***2012 (3) L.W. 181*** it has been observed as follows:-

“If that is the position, the proper course for the respondents 4 to 9 is to go before the competent civil court and file a civil suit for declaration. Without doing so they cannot agitate the matter before the first respondent straight away seeking for cancellation of patta standing in the name of the petitioner and consequently, seeking for grant of patta in their name.”

16.2. In the case of ***Sawarni (Smt) -vs- Inder Kaur (Smt) and others*** reported in ***(1996) 6 SCC 223*** the Hon'ble Supreme Court had observed as follows:-



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“Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enable the person in whose favour mutation is ordered to pay the land revenue in question.

16.3. In the case of **Suraj Bhan and others -vs- Financial Commissioner and others** reported in (2007) 6 SCC 186, the Hon'ble Supreme Court has held as follows:

“9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the Writ Petition.

16.4. In the case of **Jitendra Singh -vs- State of Madhya Pradesh and others** reported in 2021 SCC Online 802, the Hon'ble Supreme Court has held as follows:

"6. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt.Ananti Bai. Even, according to the petitioner also, Smt.Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 09.08.2011, i.e., before the death of Smt.Ananti Bai. It cannot be disputed that the right on the basis



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of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."

17. The learned Counsel for the first Respondent submitted that the first Respondent is the Defendant before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai.

18. The learned Counsel for the first Respondent submitted that the Plaintiffs had filed suit for declaration of title and for permanent injunction only. It is to be noted that there is no claim for recovery of possession.

19. The learned Counsel for the first Respondent invited the attention of this Court to the discussion of evidence by the learned District Munsif-cum-Judicial Magistrate in paragraphs 11,12, 13, 14 regarding the claim of the Plaintiffs.

20. It is the contention of the learned Counsel for the first Respondent



that the Plaintiffs had filed the sale deed of the year 1965 and the mortgage deed of the year 1965. Except these two documents, there was no other document to show their possession.

21. The learned Counsel for the first Respondent also invited the attention of this Court to the discussion of evidence by the learned first Appellate Judge and the points for determination raised by the learned Sub Judge, Hosur which are as follows:-

(1). *Whether the claim of the Plaintiffs that the Defendant were placed in possession by the Plaintiffs was true?*

(2) *Whether the Plaintiffs had proved that the possession was retained with the Plaintiffs and whether it was proved before the Trial Court?*

(3) *Whether the suit properties belong to the Plaintiffs? Whether the claim of the Plaintiffs to the suit property had been proved before the trial Court?*

(4) *Whether the discussion of the issues raised by the trial Court were correctly analysed?*

(5) *Whether the issue framed by the trial Court correctly analysed by the trial Court and properly answered?*

(6) *To what relief the Appellants are entitled to?*

22. In discussion to point for determination-1, the learned first Appellate Judge on independent assessment of the very same materials available before the trial Court had arrived at a conclusion that the Plaintiffs



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had not filed any documents in support of their contention that the Defendant were given possession of the properties as permissive occupier. If that be so, the Plaintiffs ought to have filed documents regarding payment of taxes to Authorities concerned, in support of their claim, either in their name or in the name of Defendant in their custody. Since they had not done so, the findings given by the learned District Munsif-cum-Judicial Magistrate that the Plaintiffs was not at all in possession was accepted by the learned first Appellate Court Judge.

23. Regarding the discussion to the point for determination-2, the learned first Appellate Court Judge had observed that the Plaintiffs had not filed single piece of document in support of their contention that the possession of the property was handed over to the Defendant as permissive occupier or to claim the title under which they asserted their ownership and title. The learned first Appellate Court Judge had observed that the father of the Plaintiffs was alive 8 years prior to the filing of the suit in the year 2002. If what had been stated by the Plaintiffs in the plea as well as in the evidence are proved under UDR Patta that the Defendant had been issued Patta, then the Plaintiffs' father would have asserted his right during his lifetime (i.e. from the year 1985 till 2002). Neither the Plaintiffs' father nor the Plaintiffs had



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asserted their right to claim title in the suit property. Therefore, the point for determination 2 was also answered against the Appellant by the first Appellate Court.

24. The learned Counsel for the first Respondent invited the attention of this Court to the discussion of evidence to points for determination 3, 4 and 5 by the first Appellate Court Judge and had arrived at a conclusion that the Appeal lacks merit and dismissed the Appeal.

25. It is the contention of the learned Counsel for the first Respondent that the claim of the Appellants before the first Appellate Court was not proved. On re-appraisal of evidence independently before the learned District Munsif-cum-Judicial Magistrate by the learned Sub Judge, he had arrived at a finding that the Plaintiffs had not proved their claim regarding continuous possession from 1965 till the filing of the suit. Thereby, negated the claim and dismissed the Appeal.

26. It is the further submission of the learned Counsel for the first Respondent that in this case when there is concurrent finding of facts, there cannot be any Second Appeal. Also, the learned Counsel for the Respondent



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relied on the reported decision in the case of *Parvathy Thilagam and others*
WEB COPY *-vs- Rengasamy Nadar and others* reported in *2016 SCC Online Mad 8889*,

the facts of the reported decision are similar to the facts of the case in this Appeal. Therefore in the light of the reported decision, the learned Counsel for the respondent seeks dismissal of the Appeal.

27. Heard the learned Counsel for the Appellants Mr.C.Sai Krishnan and the learned Counsel for the first Respondent Ms.B.Sasikala for Mr.M.P.Saravanan.

28. Perused the documents under Ex.A-1 to Ex.A-4 and Ex.B-1 to Ex.B-4. Perused the judgment of the learned District Munsif-cum-Judicial Magistrate, Denkanikottai in O.S.No.64 of 2002 dated 30.04.2009 and the judgment of the learned Sub Judge, Hosur in A.S.No.23 of 2009, dated 29.10.2012.

Discussion regarding substantial questions of law 1 to 4:

29. In the light of the submissions made by the learned Counsel for the first Respondent, in the light of the concurrent findings of the learned District Munsif-cum-Judicial Magistrate, Denkanikottai, on independently



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assessing the evidence and the learned Sub Judge, as the first Appellate Court

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Judge re-assessed the very same evidence had arrived at the same conclusion that the Plaintiffs or their father in whose name, the Ex.A-1 title deed stands had not asserted their right to title in which they asserted their right of ownership and possession in the suit property from the year 1965 onwards. The Plaintiffs during the course of evidence failed to prove that the possession was handed over to the Defendant as permissive occupier. On the contrary, the Defendant had in the written statement claimed that the Defendant's father-in-law is a relative of the Plaintiffs' father. Therefore, Plaintiffs' father had handed over the possession as a sale of the property. During the lifetime of the Plaintiffs father Nanje Gowdu he did not assert his right to evict Defendant's father-in-law from the suit property.

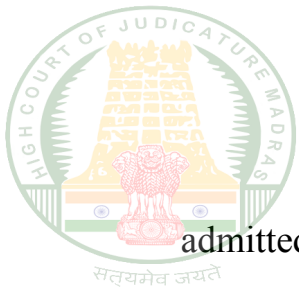
30. The Plaintiffs in the plaint had not sought recovery of possession as pointed out by the learned Counsel for the first Respondent in the Second Appeal. If the plaint pleadings is to be accepted, the Plaintiffs are not in possession on the date of filing of the suit as the Plaintiffs had only two documents as material in evidence title deed under Ex.A-1 and mortgage deed under Ex.A-3. The Plaintiffs had not filed any other document to prove that they were in possession or that they paid all the dues to the respective



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Government Department for the period from 1965 till 2002 (i.e till the date of filing of the suit). Therefore, the claim of the Plaintiffs for declaration of title of possession is misconceived. Possession is not with the Plaintiffs as on the date of filing of the suit. If the Plaintiffs had filed suit for declaration and suit for recovery of possession then, it is justified. The claim of the Plaintiffs is that from the UDR Patta in 1985, the Defendant's father-in-law by colluding with Revenue Authorities, slowly converted the title in his name by obtaining revenue records in his name. Had it been so, during the lifetime of the Plaintiffs' father either the Plaintiffs or their father should have agitated the right within the time prescribed under the Limitation Act. However, they had not asserted their right from 1985 till 2002. They had not approached the Court within the period of limitation. Therefore, the discussion and re-appreciation of evidence by the learned Sub Judge, Hosur, and giving a finding that the Plaintiffs failed to assert their right in the suit property is found justified. The learned Sub Judge had confirmed the finding of the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. The facts of the reported ruling in **2016 SCC Online Mad 8889** squarely applies to the facts of this case. Except the title deed in favour of the Plaintiffs father in the year 1965, no other document was relied by the Plaintiffs to assert their right for possession continuously from 1965 till date of filing of the suit. If the Plaintiffs had



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admitted that they are not in possession, the Plaintiffs ought to have sought relief of declaration of title and recovery of possession and damages for use and occupation, but, they had not done so. Therefore, as on the date of filing of the suit, the Plaintiffs were not in possession. The Plaintiffs seek injunction restraining Defendant from interfering with their peaceful possession of the suit property but on analysing evidence it is against the claim of the Plaintiffs. The Plaintiff has to stand or fall on the strength of his own case, and he cannot seek decree by pricking holes in the evidence of Defendant as per the dictum laid down by the Hon'ble Supreme Court in the case of ***State of Karnataka v. Union of India*** reported in (1977) 4 SCC 608 : 1977 SCC OnLine SC 301.

31. During the course of argument, the learned Counsel for the first Respondent claimed that his possession had been perfected as title by adverse possession. The claim of adverse possession cannot be accepted as the Defendant in the written statement claims that the father-in-law of the Defendant had purchased property from the Plaintiffs father through oral deed since they were relatives. Plaintiffs father did not want to assert his right. Believing the words of the Plaintiffs' father, Defendant had not obtained written deeds. In the light of such fact, by continuous possession and by acquiescence, Defendant being in possession from 1965 to 2002 for over 37



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years had perfected title not by adverse possession, but as permissive occupier, as per the reported decision in the case of *Parvathy and others -vs- Rengasamy Nadar (died) and others* reported in *2016 SCC Online Mad 8889*, which is based on the decision of the Hon'ble Supreme Court. As rightly observed by the learned first Appellate Court Judge, there is no document other than Ex.A-1 and Ex.A-2 in support of the claim of the Plaintiffs that they were in continuous possession. Therefore, the Plaintiffs are not entitled to permanent injunction. As per the evidence available before the trial Court as well as the first Appellate Court, the said principle did not aid the Plaintiffs in his case. On the strength of evidence available before the trial Court, if possession follows, then the title had been proved, the Plaintiffs has to offer his reasons for not approaching this Court within the period of limitation after 1985 after the date of UDR Patta.

32. The claim of the Appellants is that during the UDR Patta, the Defendant's father usurped the property in collusion with the Revenue Authorities. If that be so, during the lifetime of the Plaintiffs' father till his death, 8 years prior to filing of the suit they had not agitated their right. The Plaintiffs also did not approach the Court within the specified time. Therefore, as on the date of filing of the suit, the suit property had been in possession

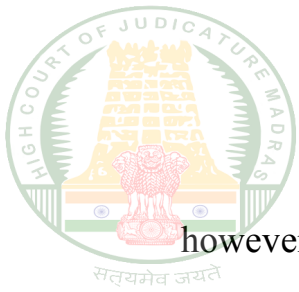


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continuously for over 37 years and the Defendant had perfected her title by acquiescence as observed by the learned Sub Judge. There is no pleading that the Defendant perfected her title by adverse possession by evidence. The learned Judge had arrived at a conclusion logically that the Plaintiffs failed to assert their right from 1965 within the period of limitation and they have come after 37 years by which time, the Defendant had by acquiescence perfected her title.

33. The ruling cited by the learned Counsel for the Appellants in **2021 SCC Online SC 802** in the case of ***Jitendra Singh Vs. The State of Madhya Pradesh*** is not helpful to the facts of the case of the Plaintiffs. In the reported decision, the Petitioner therein filed an Application under Section 109/110 of the Madhya Pradesh Land Revenue Code to mutate his name in the revenue records in respect of Khasra No. 41/03, 101/03, 314/03, 102/02, 132/02, 133/03, 142/02, 145/02, 146/02, 313/01, total area of 4.53 acres situated in village Dudha, Tehsil Rampur Baghelan, District Satna, on the basis of the alleged will executed by one Smt. Ananti Bai, widow of Bhagwandeem Bargahi – his maternal grandmother. The alleged Will was executed on 20.05.1998. It is required to be noted that though initially it was the case on behalf of the Petitioner that Smt. Ananti Bai died on 20.05.1998,



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however, subsequently, it was stated that there was a typographical error and

Smt. Ananti Bai died on 27.08.2011. It is to be noted that the Application for mutation was filed on 9.8.2011, i.e., even prior to the death of Smt. Ananti Bai. Therefore, the Application was filed against Ananti Bai when she was alive. By order dated 30.09.2011, the Nayab Tehsildar, District Satna directed to mutate the name of the Petitioner herein in the revenue records in respect of the aforesaid lands solely on the basis of the alleged will dated 20.05.1998. The legal heirs and daughters of Smt. Ananti Bai preferred Appeal before the Sub-Divisional Officer, Tehsil Rampur Baghelan, District Satna, Madhya Pradesh. The SDO allowed the said Appeal and set aside the Order passed by the Nayab Tehsildar directing to mutate the name of the Petitioner herein in the Revenue records. The Petitioner herein preferred Appeal before the learned Additional Commissioner, Rewa Division, Rewa challenging the Order passed by the SDO dated 12.09.2018. The learned Additional Commissioner, Rewa Division, Rewa allowed the said Appeal and quashed and set aside the Order passed by the SDO dated 12.09.2018 and consequently the Order passed by the Nayab Tehsildar directing to mutate the name of the Petitioner herein in the Revenue records on the basis of the alleged Will dated 20.05.1998 came to be restored. By the impugned Judgment and Order, the High Court has set aside the Order passed by the Additional Commissioner observing that once



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the Will is disputed and even otherwise the Petitioner who is claiming rights/title on the basis of the Will executed by the deceased Ananti Bai, the remedy available to the Petitioner would be to file a Suit and crystallise his rights. Against which, the original Applicant had approached the Hon'ble Supreme Court.

34. After hearing both parties, the Hon'ble Supreme Court had dismissed the Petition observing the order passed by the Hon'ble High Court directing the Petitioner to approach the Civil Court to crystallise his rights based on Will. Therefore, the facts of the reported ruling will not help the case of the Plaintiffs before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai who are the Appellants herein. Hence, rejected.

35. In the reported decision in **(1996) 6 SCC 223** in the case of ***Sawarni (Smt) Vs. Inder Kaur (Smt) and others*** it has been observed as follows:

B. U.P. Land Revenue Act, 1901 (3 of 1901) – S.35 – Mutation of name in revenue records – Effect – Held, does not create or extinguish the title nor has any presumptive value on title – It only entitles the person concerned to pay land revenue.

36. The said observation is an accepted proposition of law. Here, the learned District Munsif-cum-Judicial Magistrate, Denkanikottai as well as the



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learned Sub Judge, Hosur had observed that except Ex.A-1/sale deed in the name of the father of the Plaintiffs and Ex.A-2/mortgage deed executed by the father of the Plaintiffs, no other document is available or marked on the side of the Plaintiffs regarding possession of the property right from the date of purchase in the year 1965 till the date of filing the Suit in the year 2002. The Revenue records are in the name of the Defendant which indicates that the Defendant's father-in-law was continuously paying the dues to the Government for the agricultural lands in possession of the Defendant's father-in-law. In this case, Revenue records were continuously in the name of the father-in-law of the Defendant from 1965 till 2002. The Plaintiffs had sought declaration that the Suit property belonged to them. The Plaintiffs had claimed that the Plaintiffs' father had handed over possession to the Defendant to cultivate the property on his behalf, whereas the Defendant had paid the Revenue to the Government in his name, thereby preventing the Plaintiffs from enjoying the property. As per the claim of the Plaintiffs, the Plaintiffs are not in possession. The Plaintiffs are in Bangalore, whereas the property is within the territorial jurisdiction of learned District Munsif-cum-Judicial Magistrate, Denkanikottai. Therefore, the possession is with the Defendant. The Defendant had filed written statement claiming that the Plaintiffs' father/Nanje Gowdu had after purchase of the property, sold the property to his relative



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WEB COPY Munimare Gowdu. Since they are relatives and close friends, it was an oral sale. After the death of the Defendant's father-in-law/Munimare Gowdu, the Defendant and her husband/Thammanna @ Thammiah names have been carried out in the Revenue records. Till the lifetime of the father of the Plaintiffs, he had not asserted his right or questioned the possession of the Defendant's father-in-law. The Plaintiffs were entitled to prove the pleadings in the Plaint that Nanje Gowdu was in possession and enjoyment of the Suit property and the Revenue records viz., Patta, Chitta and Adangal stood in the name of Nanje Gowdu. The said pleadings in the Plaint had not been proved through documents during trial before the learned District Munsif-cum-Judicial Magistrate whereas the Defendant had filed documents regarding proof of possession which were marked as Ex.B-1 to Ex.B-4. Ex.B-4 is the series of receipts for having paid dues to the Government. Therefore, the learned District Munsif-cum-Judicial Magistrate had held that the Plaintiffs had not proved their names in the Revenue records nor their possession of the sit properties. Continuous possession was with the family of the Defendant as per the records under Ex.B-1 to Ex.B-4. The claim of oral sale is found probable as per the evidence before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. Further, it was observed by the learned District Munsif-cum-Judicial Magistrate, the UDR Patta was granted in favour of the



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Defendant in the year 1985, at the time when Nanje Gowdu, the father of the Plaintiffs was alive. He ought to have objected the same during his lifetime.

He did not have time to come to Denkanikottai and file the Suit. The Plaintiffs ought to have agitated the same by preferring any Appeal to the Higher Officers of the Revenue Department. They had not done so till the date of filing of the Suit. This point of view of the learned District Munsif-cum-Judicial Magistrate was confirmed by the learned Sub Judge, Hosur. Therefore, the reliance placed by the learned Counsel for the Appellants reported in **(1996) 6 SCC 223 in the case of Sawarni (Smt) Vs. Inder Kaur (Smt) and others** observed that the *Mutation of name in revenue records does not create or extinguish the title* will not hold good to the facts of this case.

37. Further, as per the ruling reported in **2016 SCC Online Mad 8889 in the case of Parvathy Thilagam and others Vs. Rengasamy Nadar (died) and others** where it was also a similar case of oral sale as claimed by the Defendant. Therefore, the claim of the Defendant before the learned District Munsif was accepted by the learned District Munsif-cum-Judicial Magistrate and confirmed by the learned Sub Judge. Under those circumstances, placing reliance on the said ruling of the Hon'ble Supreme Court is not helpful to the facts of the case of the Plaintiffs. Hence, rejected.

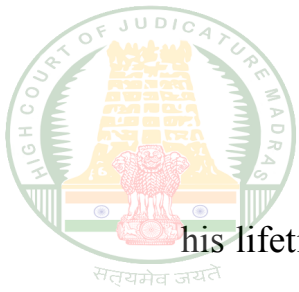


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39. Ex.B-2 to Ex.B-4 are the documents regarding payment of dues to the Government in the name of the Defendant in the Patta under Ex.B-1.

40. In support of the claim of the Plaintiffs for having enjoyed the property in the name of the Plaintiffs, no documents had been furnished. If what had been stated by the Plaintiffs in the Plaint and asserted in the evidence of the Plaintiffs had been true, the father of the Plaintiffs/Nanje Gowdu during



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his lifetime should have agitated his rights by filing the Suit or Appeal against the grant of Patta in the name of the father of the Defendant/Munimare Gowdu. He had not done so during his lifetime. After his death, before filing the Suit in the year 2002, the Plaintiffs had not preferred any Appeal against the issue of Patta under the UDR scheme to the Defendant's father-in-law or the Defendant's husband. During cross-examination, the third Plaintiff as P.W-1 had stated that she paid the dues to the respective Department for enjoyment of the Suit property on behalf of her father and for herself. But she had not filed any receipts for having paid dues to the Government. She admitted that she had not marked the same. The UDR Patta for the Suit property was granted to the father-in-law of the Defendant/Munimare Gowdu during the lifetime of the father of the Plaintiff/Nanje Gowdu. That is why, Nanje Gowdu, during his lifetime had not preferred any Appeal against the grant of UDR Patta in favour of the Defendant. P.W-1/third Plaintiff had denied the suggestion that she had not paid any dues to the Government on behalf of the Plaintiffs. The vendor of the father of the Plaintiff/Ramey Gowdu s/o. Ramey Gowdu is none other than the paternal uncle of the Defendant's husband was admitted by P.W-1 in her cross-examination.

41. The suggestion of the learned Counsel for the Defendant was that



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Munimare Gowdu approached the father of the Plaintiffs/Nanje Gowdu for reconveyance of the property. Accordingly, the father of the Plaintiff/Nanje Gowdu reconveyed the property to the father-in-law of the Defendant/Munimare Gowdu which was denied by her.

42. The suggestion of the learned Counsel for the Defendant that the son of Nanje Gowdu knew about the said transfer of land in the name of Munimare Gowdu through an oral sale and that was why he had not come forward and offered to depose evidence on behalf of the Plaintiffs, was also denied by P.W-1. To the suggestion of the learned Counsel for the Defendant regarding the claim that the Suit property was sold by oral sale by the father of the Plaintiff/Nanje Gowdu in favour of the Defendant's father-in-law/Munimare Gowdu, and that was why during his lifetime, Nanje Gowdu, the father of the Plaintiffs did not agitate his right seeking to set aside the grant of UDR Patta in favour of the husband and father-in-law of the Defendant, was denied by P.W-2. P.W-3 is the Village Administrative Officer, he claims that the Suit property was enjoyed by the Plaintiffs' father but he was unable to give details. He was unable to answer the question of how Patta, Chitta and Adangal were issued in favour of the Defendant. P.W-4/S.M.Inaiyathulla, was unable to answer the question put to him in cross-examination regarding



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enjoyment of the property by the Defendant. The UDR Patta in the Suit property stood in the name of the father-in-law of the Defendant, was also denied by him.

43. On perusal of the deposition of the Defendant's witnesses, it is found that all of them were illiterate and they were unable to give details of the property in the cross-examination by the learned Counsel for the Plaintiffs.

44. The claim of the Defendant was not disproved by the Plaintiffs in the evidence of P.W-1. In her cross-examination, P.W-1 had admitted that the father of the Plaintiff/Nanje Gowdu was a relative of the father-in-law of the Defendant. The suggestion of the learned Counsel for the Defendant was that the property was purchased by Nanje Gowdu from the brothers of Munimare and Rame Gowdu. Immediately, after the sale only, he came to know about the same. Therefore, he approached Nanje Gowdu to reconvey the property. Accordingly, Nanje Gowdu agreed and sold by oral sale. This fact was known to the son of Nanje Gowdu and brother of Parvathamma, who is also the Plaintiff in the Suit. That is why, the suggestion that he did not appear to depose evidence in support of the claim of the Plaintiffs, was denied by P.W-1/ Parvathamma. The claim of Parvathamma was not proved through cogent



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evidence before the trial Court. Therefore, the claim of the Plaintiffs that the Defendant were placed in possession by the Plaintiffs is not true. Hence, the substantial question of law-2 is answered in favour of the Defendant and against the Plaintiffs.

45. In the light of the above discussions from paragraphs 29 to 44, **the substantial questions of law-1 and 2 raised by this Court is answered in favour of the Defendant and against the Plaintiffs.**

46. The substantial question of law-3 regarding the claim of the Plaintiffs is that the Plaintiffs are the owner of the property. The Defendant was a permissive occupier. The Defendant denied the claim of the Plaintiffs. That is why, the Plaintiffs had filed the Suit for declaration of the title of the Suit property is found unacceptable. The claim of the Defendant in the written statement that the Plaintiffs' father/Nanje Gowdu orally sold the property to Munimare Gowdu since they happened to be relatives and close friends. The Plaintiff's father/Nanje Gowdu reconveyed the property to Munimare Gowdu without registering the sale deed. That is why, he during his lifetime had not agitated his right before any Tribunal or before the Civil Court. This suggestion was put by the learned Counsel for the Defendant, even though the

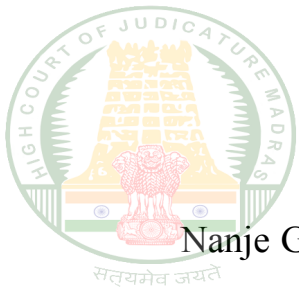


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suggestion was denied by the Plaintiffs, the Plaintiffs were unable to give documents to prove the claim of possession by the Plaintiffs. Therefore, the Plaintiffs had not proved possession before the learned District Munsif-cum-Judicial Magistrate, Denkanikottai. Hence, **the substantial question of law-3 is answered in favour of the Defendant and against the Plaintiffs.**

47. On perusal of the Judgment of the learned District Munsif-cum-Judicial Magistrate as well as the learned Sub Judge, they have properly analysed the evidence and answered the issues cogently. When the Defendant claims to have derived title from the Plaintiffs' father, the Courts below are justified in rejecting the case of the Plaintiffs for declaration of the title as the Defendant proved her case of legal transfer considering the fact that the vendor of the Plaintiffs father was none other than the brother of the Defendant's father-in-law. Only on hearing about the transfer from the vendor of the Plaintiffs father to the Plaintiffs father, the father-in-law of the Defendant is alleged to have approached the father of the Plaintiffs. Therefore, it is the contention of the Defendant that Nanje Gowdu re-conveyed the property through oral sale to Munimare Gowdu. That is why, during his life time, Nanje Gowdu had not objected to grant of patta to Munimare Gowdu. This fact is known to the brother of P.W-1 Parvathammal, son of



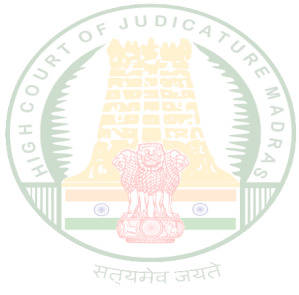
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Nanje Gowdu, who is also a Plaintiff in the suit but he did not choose to enter the witness box. Therefore, the Courts below are justified in rejecting the case of the Plaintiffs for declaration of title. **Hence, the substantial questions of law-4 is answered in favour of the Defendant and against the Plaintiffs.**

In the result, *this Second Appeal is dismissed.* The Judgment and Decree dated 29.10.2012 in A.S.No.23 of 2009 on the file of the Subordinate Court, Hosur in confirming the Judgment and Decree dated 30.04.2009 in O.S.No.64 of 2002 on the file of the District Munsif Court, Denkanikottai is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

25.06.2025

shl/dh
Internet : Yes/No
Index : Yes/No
Speaking/Non-speaking order

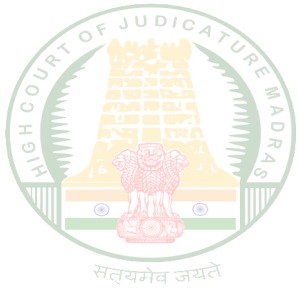


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To

1. The District Munsif-cum-Judicial Magistrate,
Denkanikottai.
2. The Sub Judge,
Hosur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

shl/dh

Judgment made in
S.A.No.301 of 2013

25.06.2025