



S.A.No.484 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.484 of 2017

1.Madevamma
2.Madevan
3.Devaraju

... Appellants

Vs.

1.Jademathi
2.Rajammal
3.Rangasamy
4.Devaraj
5.Jeyamma
6.Rathinammal

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 17.03.2017 passed in A.S. No.29 of 2016, on the file of the Sub Court, Sathyamangalam, Erode District, upholding the decree and judgment dated 27.11.2015 passed in O.S.No.331 of 2011, on the file of the District Munsif Court, Sathyamangalam, Erode District.



S.A.No.484 of 2017

WEB COPY

For Appellants : Mr.I.C.Vasudevan
For Respondents : Mr.M.Dhamodharan

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.

2. The plaintiffs filed the suit for declaration of their title to the suit property, which is morefully described in the plaint as a house site in survey number 80 of Mallankuzhi Village, Sathyamangalam Taluk, Gobichettipalayam Registered District, measuring hectare 1.99.5. The plaintiffs have also prayed for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



S.A.No.484 of 2017

WEB COPY

4.The case of the plaintiffs in a nutshell is as follows :

The suit property was originally a government land. The plaintiffs' father Uchaiah has been in possession and enjoyment of the suit property for about fifty years. Since Uchaiah, the father of the plaintiffs was in possession of some other property and also obtained patta for the same, he got patta in respect of the suit property in the name of his sister Sikkumathy. However, Uchaiah and his legal heirs were in possession and enjoyment of the suit property. Thus they prescribed title by adverse possession and prescription. Sikkumathy was given in marriage several years back and she was not in possession and enjoyment of the suit property. However, on 05.11.2011 the defendants who are the legal heirs of Sikkumathy attempted to trespass into the suit property and the plaintiffs successfully prevented it. Hence the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. It is false to contend that though patta was assigned in the name of Sikkumathy, Uchaiah, the father of the plaintiffs was in possession



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- ii. It is also false to contend that on 05.11.2011 the defendants attempted to interfere with the plaintiffs' possession over the suit property.
- iii. Uchaiah and Sikkumathy are brother and sister.
- iv. The defendants are residing in the state of Karnataka and since the plaintiffs were residing in the suit village, they used to get the money from the defendants for payment of necessary tax to the Government.
- v. Therefore, the suit filed by the plaintiffs is liable to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- "(i) Whether the plaintiffs own and possess the suit property ?*
- (ii) Whether the plaintiffs are entitled to seek for a relief of injunction against the legal heirs of the deceased Chikkumathi in whose favour the suit property was assigned by the Government ?*
- (iii) Whether the plaintiffs are entitled for a mandatory injunction*



S.A.No.484 of 2017

WEB COPY *as prayed for by him ?*

(iv) To what other relief the plaintiffs are entitled?"

7. In the trial Court, the first plaintiff examined herself and two other witnesses and marked Ex.A1 and Ex.A2. The third defendant examined himself and one another witness. However, no documentary evidence was adduced on the side of the defendants.

8. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiffs, vide his decree and judgment dated 27.11.2015, on the following grounds:

- i. Even according to the plaintiffs the patta was issued in the name of Sikkumathy.
- ii. The plaintiffs cannot contend that Uchaiah obtained patta in the name of his sister as it is hit by Section 3 and 4 of the Benami Transactions (Prohibition) Act, 1988.
- iii. The plaintiffs cannot seek a declaration of title to the suit property based on the adverse possession as held in the decision of the



S.A.No.484 of 2017

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iv. The case of the plaintiffs cannot be accepted because the government had issued patta only for landless poor and judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person.

9. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiffs filed an appeal in A.S. No.29 of 2016, before the Sub Court, Sathyamangalam. The learned Subordinate Judge, Sathyamangalam, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 17.03.2017, as against which the present second appeal is filed.

10. Though the second appeal is filed in the year 2017 it has not been admitted till date.



S.A.No.484 of 2017

WEB COPY

11. Heard Mr.I.C.Vasudevan, learned counsel for the appellants and Mr.M.Dhamodharan, learned counsel for the respondents.

12. It is pertinent to point out that when the plaintiffs claim title to the suit property by stating that their father Uchaiah obtained patta in the name of his sister Sikkumathy and therefore they are the true owners, they are also claiming adverse possession and prescription over the suit property. These two contentions are mutually contradictory and therefore, the same cannot be accepted. The plaintiffs have also admitted in the plaint that their father Uchaiah is in possession of some other property and obtained patta for the same. According to them, the government issued patta for each of the landless poor. Uchaiah who was admittedly issued a patta in respect of another property cannot obtain a patta in the name of his sister. In any event, it was not also proved by the plaintiffs. The plaintiffs have not also stated when their possession became adverse to the true owners. There is absolutely no pleading in the plaint in this regard. All these aspects have been properly analysed by



S.A.No.484 of 2017

WEB COPY

both the Courts below and by no stretch of imagination they can be termed perverse. In fact, there is no substantial question of law involved in the present appeal and therefore, the second appeal deserves to be dismissed.

13. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 17.03.2017 passed in A.S. No.29 of 2016, on the file of the Sub Court, Sathyamangalam, Erode District, and the decree and judgment dated 27.11.2015 passed in O.S.No.331 of 2011, on the file of the District Munsif Court, Sathyamangalam, Erode District, are upheld.

21.01.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



S.A.No.484 of 2017

WEB COPY

To

1. The Sub Court, Sathyamangalam, Erode District.
2. The District Munsif Court, Sathyamangalam, Erode District.
3. The Section Officer, VR Section, High Court, Madras.



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S.A.No.484 of 2017

R. HEMALATHA, J.

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S.A.No.484 of 2017

21.01.2025