

S.A.(MD)No.212 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.212 of 2019

and

C.M.P.(MD)No.4337 of 2019

Kathavarayan (Died)

1.Jakkammal

2.Kamuthai

3.Maheswari

4.Gopinathan

5.Vijayan

6.K.Bharathi

7.Muruganandam

... Appellants

vs

Jakkammal

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 27.02.2019 made in A.S.No.2 of 2014 on the file of the Subordinate Court, Periyakulam, confirming the judgment and decree, dated 28.11.2013 made in O.S.No.70 of 2011 on the file of the District Munsif Court, Periyakulam.

For Appellants : Mr.K.Appadurai

For Respondent : Ms.A.Rajini



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JUDGMENT

The defendants are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 27.02.2019 in A.S.No.2 of 2014 on the file of the Subordinate Court, Periyakulam, confirming the judgment and decree, dated 28.11.2013, made in O.S.No.70 of 2011 on the file of the District Munsif Court, Periyakulam.

2.For the sake of convenience, the parties are referred to, as per their litigative status before the trial Court.

3.It is the case of the plaintiff that her mother, Subbi, was granted patta for a vacant site in Plot No.41 measuring to an extent of three cents by the Government through Adi Dravidar Welfare Department, Theni, on 26.07.1964. Pursuant to the grant of patta, the plaintiff's mother had been in possession and enjoyment of the suit property by putting up a house and residing there with her family. After to the death of the plaintiff's mother and also her husband, Palani, who is the plaintiff's father, the plaintiff had inherited the property given to her mother. The plaintiff had been in



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possession and enjoyment of the property by paying house tax and electricity charges.

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4.It is the further case of the plaintiff that as the original patta granted in favour of her mother got damaged, she had obtained informations under the Right to Informations Act, 2005, on 16.10.2008, wherein, it is certified about the issuance of patta in favour of the plaintiff's mother for Plot No.41. It is also the case of the plaintiff that since the first defendant, who was her relative, was house less and had requested the plaintiff to allow him to put up a hut in a portion of the property, the plaintiff permitted the first defendant to occupy a portion measuring one cent on 01.01.1995 and therefore, the first defendant from that date is occupying a portion, as a permissive occupant. Since the plaintiff's family wanted a larger area, she had asked the first defendant to vacate, but only then, she came to know that the first defendant had clandestinely executed a settlement deed in favour of the second defendant on 23.01.2011 and therefore, since the first defendant was having no right in the suit property and any settlement deed executed in favour of the second defendant will not bind the plaintiff, she had come up with the suit seeking for declaration and recovery of possession.



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5.The defendants resisted the suit by filing a written statement contending that even though three cents of property was allotted and patta was given in favour of the plaintiff's mother, Subbi, the plaintiff's mother and the plaintiff had jointly sold 1½ cents of the suit property out of three cents in favour of the first defendant on 07.09.1973. Pursuant to the purchase, they have put up a house and they have been residing in the property for nearly 37 years. Since the first defendant is the owner of the 1½ cents through purchase, he had executed a settlement deed in favour of his daughter, the second defendant. The defendants have disputed the claim of the plaintiff that they are in possession of the suit property only based on the permission, but however, they are enjoying the property pursuant to the purchase made by them through the sale deed in the year 1973 and sought for dismissal of the suit.

6.During trial, the plaintiff examined herself as PW-1 and two other witnesses as PW-2 and PW-3 and marked Ex-A1 to Ex-A4 and on the side of the defendants, the second defendant examined herself as DW-1 and further examined two other witnesses, as DW-2 and DW-3 and marked Ex-



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B1 to Ex-B5.

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7.The trial Court, after considering the oral and documentary evidences, came to the conclusion that the plaintiff's mother having been issued with the patta by the Government and the plaintiff, after inheritance, had become the absolute owner, but the defendants, who claim title through purchase in the year 1973, failed to establish their title, since the documents filed in Ex-B1, is not registered and proved. The trial Court decreed the suit and on appeal, the lower appellate Court also concurred with the findings of the trial Court and came to the conclusion that the document relied on by the defendants in Ex-B1, since not registered and further, the witnesses in the document having not been examined, has not proved their title and when admittedly, the plaintiff's mother was granted patta by the Government, the plaintiff is entitled for the suit relief and dismissed the appeal. Assailing the concurrent finding on fact, the defendants are before this Court with the above Appeal.

8.This Court by order, dated 16.02.2022, had admitted the Second Appeal on the following substantial question of law:



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“When the plaintiff has filed a suit showing scheduled

property as vacant site, whether the Courts below were right in granting a decree for recovery of possession of the house property in occupation of the defendant?”

9.Mr.K.Appadurai, learned Counsel for the appellants argued that when the first defendant has been in possession of the suit property from the year 1973 in view of the purchase made by him in Ex-B1, the plaintiff has no right to seek for declaration of the entire property after having sold a portion of the property. The learned Counsel for the appellants also submitted that since even according to the plaintiff, the defendants have been in enjoyment of the suit property from the year 1995 and since the plaintiff contends that she gave permission to occupy, it is for the plaintiff to prove that the defendants have been in permissive possession of the suit property. The learned Counsel further submitted that when the defendants have filed a document in Ex-B1, which is of the year 1973, by which, the first defendant had purchased the property, even otherwise, the defendants would be entitled to be in possession and had got the right over the suit property by adverse possession. The learned Counsel also contended that as



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such, the Courts below have not considered these aspects in a proper perspective and therefore, the findings are perverse and sought for interference of this Court.

10.*Per contra*, Ms.A.Rajini, learned Counsel appearing for the respondent submitted that the Government had issued patta in favour of the plaintiff's mother in Ex-A1 and when the plaintiff's mother is the admitted owner, when the defendants are in possession of the part of the property, the plaintiff, who had inherited the property, as a rightful owner, is entitled to for the relief of recovery of possession. The learned Counsel further submitted that when the defendants claim right through a document in Ex-B1, the onus is on the defendants to prove the document and particularly, when the document is not permissible to be received in evidence, as it is not registered, the Courts below have rightly rejected the claim made by the defendants and had decreed the suit, which needs no interference and sought for dismissal of this appeal.

11.Heard the rival submissions and perused the materials available on record.



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12. Admittedly, the property measuring an extent of three cents bearing Plot No.41 belonged to the Government and Adi Dravidar Welfare Department, Theni, and patta was granted in favour of the plaintiff's mother, Subbi, on 26.07.1964. The copy of the patta granted in favour of the plaintiff's mother has been filed as Ex-A1. Pursuant to the death of the plaintiff's mother, the plaintiff, who had inherited the property, had been residing there and had filed the documents in Ex-A2 and Ex-A3, which are the house tax receipts and electricity receipts to evidence the possession of the plaintiff. Since the original patta issued in favour of the plaintiff's mother got damaged, the plaintiff had obtained information under the Right to Information Act, 2005, from the Government on 16.10.2008, which certifies that the patta, a copy of which filed in Ex-A1, has been issued in favour of the petitioner's mother. The communication, dated 16.10.2008, has been filed as Ex-A4. As such, by filing of the documents in Ex-A1 to Ex-A4, the plaintiff has established her title and possession over the suit property.

13. Even according to the plaintiff, since the first defendant, who was her relative, was house less and wanted a temporary place of stay, she had



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let in a portion of the property measuring one cent to the defendant and he had been in permissive possession of that portion from the year 1995. Since the first defendant, who was in permissive possession, went ahead and executed a settlement in favour of the second defendant on 21.03.2011 in Ex-B2, the plaintiff had come up with the suit seeking for declaration and injunction.

14.The defendants have resisted the suit by claiming title over the portion of the property in which they are in possession by relying on an unregistered sale deed, dated 07.09.1973 in Ex-B1. According to the defendants, the plaintiff and her mother, Subbi, had sold a portion of the property measuring an extent of 1½ cents out of three cents in favour of the first defendant for a sale consideration of Rs.100/-.

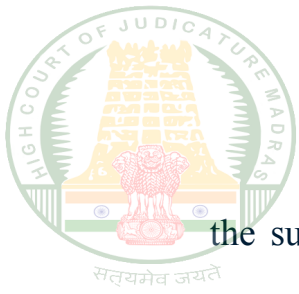
15.In this regard, it is to be noted that as per Section 17(1)(b) of the Registration Act, 1908, if a document is executed in respect of a property, which is non-testimony instrument, which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of Rs.100/- and upwards to an immovable property, then the document ought



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to be compulsorily registered. Further, as per Section 49 of the Registration Act, no document required under Section 17 of the Registration Act to be registered, shall be received as evidence of any transaction affecting such property, unless it has been registered subject to the proviso contained therein. As per the proviso, though the document has not been registered, the document could be received in evidence for any collateral purpose.

16.In the instant case, admittedly, the sale deed relied on by the defendants in Ex-B1 is for a sale consideration of Rs.100/- and therefore, the registration of the sale deed is mandatory. The claim of the defendants in placing their right over the document in Ex-B1 is not acceptable, as the document has not been registered. Further, the defendants have not chosen to examine both the witnesses, who are found in the document, to establish that there has been a transaction carried out by the plaintiff's mother and the plaintiff. Even though the document has been received as Ex-B1, it could be only used for collateral purpose to evidence that the defendants are in possession of the suit property. In the instant case, where it is admitted by the plaintiff that the defendants are in possession of the portion of the property and it is a permissive possession, the plaintiff had come up with



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the suit for declaration with consequential recovery of possession. When once the plaintiff had established the title to the suit property and the defendants having failed to establish any right particularly, when the document relied upon by the defendants in Ex-B1 is found not a legal document, whereby, the transfer could be effected, the Courts below have rightly come to the conclusion that the plaintiff is entitled for the suit relief.

17.Insofar as the arguments raised by the learned Counsel for the appellants that since the defendants have been in long possession, the defendants have also perfected the title by adverse possession. In this regard, unless, there are pleadings to the effect that the defendants had been in possession, which is open, continuous and hostile to the owner of the property and evidences are let in to prove the same, the defendants cannot claim any right on the ground of adverse possession. Further, when the defendants have not admitted the title of the plaintiff and had claimed exclusive right through the purchase from the year 1973, the argument of adverse possession raised by the appellants will go, as against the very claim made by the defendants/appellants. Therefore, the submission in this regard is rejected.



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18.In view of the above deliberations, this Court does not find any illegality or perversity in the findings rendered by the Courts below. In view of the same, the substantial question of law is answered against the appellants and in favour of the respondent.

19.Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

10.07.2025

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr

To

- 1.The Subordinate Judge, Periyakulam.
- 2.The District Munsif, Periyakulam.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ARUL MURUGAN, J.

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Judgment made in
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