



S.A.(MD).No.335 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.04.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.335 of 2004

Neelamegam (Died) ... Appellant/Respondent/Defendant

2.T.Chellammal

3.R.Muthupandi

4.N.Karuppasamy

5.N.Jeyapandi ... Appellants

(Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide Court order dated 31.01.2022 made in C.M.P. (MD).Nos.3241, 3242 and 3243 of 2020)

Vs.

1.Valliammai (Died) ... Respondent/Appellant/Plaintiff

1.Poovalingam (Died) ... Respondent

(Poovalingam is impleaded as sole respondent in the place of deceased sole respondent vide Court order 13.02.2008 made in M.P.(MD).No.1 of 2007)

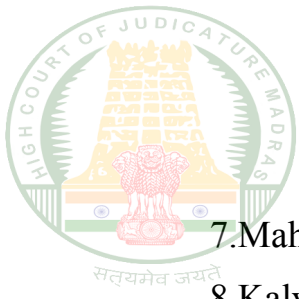
2.Muthulakshmi

3.Sanagareswari

4.Veluchamy

5.Kaleeswari

6.Palpandi



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7.Mahalakshmi

8.Kalyani

9.Ganeshamoorthy

10.Keseswari ... Respondents

(Respondents 2 to 10 are brought on record as legal heirs of the deceased sole respondent namely Poovalingam, vide Court order dated 01.02.2024 made in C.M.P.(MD).Nos.1029 and 1030 of 2024.)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree in A.S.No.1 of 2003, dated 29.07.2004, on the file of the Sub Court, Sivagangai, reversing the Judgment and Decree in O.S.No.71 of 2001 dated 15.11.2002 on the file of the Principal District Munsif Court, Manamadurai.

For Appellants : Mr.P.Saravanan for
Mr.A.Sivaji

For Respondents : Mr.V.R.Shanmuganathan

JUDGMENT

This second appeal has been filed against the Judgment and Decree in A.S.No.1 of 2003, dated 29.07.2004, on the file of the Sub Court, Sivagangai, reversing the Judgment and Decree in O.S.No.71 of 2001 dated 15.11.2002 on the file of the Principal District Munsif Court, Manamadurai.



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2.The averments of the plaint are as follows

Suit properties belongs to the plaintiff's husband Kunnaru ancestrally. After the death of Kunnaru the properties devolved upon her and she became the absolute owner of the properties. They are in possession and enjoyment. She prescribed title by adverse possession. The defendant has no right over the properties. During the UDR scheme patta was wrongly issued in the name of the defendant. Taking advantage of the same, he indulges in creating documents and apart from that he encroached the property in the year 1998. So notice of demand of restoration was given on 06.11.2000. The defendant sent reply notice containing false averments. So the suit is laid for declaration that the suit property absolutely belongs to the plaintiff and consequently recovery of possession and cost.

3.The averments of the written Statement filed by the defendant are as follows:

It is denied that the suit property belongs to the plaintiff's husband ancestrally. In respect of the suit property various suits such as suit in



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O.S.Nos.54 of 1976 and 18 of 1976 on the file of the District Munsif's Court, Manamadurai and O.S.No.54 of 1996 on the file of the Sub Court, Sivagangai, were tried and all those cases ended in favour of Rakkammal. By which, it was declared that the suit property absolutely belongs to Rakkammal. By suppressing the same, the present suit is filed by the plaintiff.

4.Rakkammal was in possession and enjoyment; she executed a Will on 04.04.1994 bequeathing the properties in favour of the defendant and his wife Meenakshi. After the death of Rakkammal Will came into effect. Defendant and his wife now are in enjoyment and possession. Meenakshi is necessary party. So the suit is bad for non joinder of necessary parties.

5.Apart from the above said suits one Poovalingam filed a suit in O.S.No.34 of 1995 before the District Munsif's Court, Manamadurai, claiming partition in respect of the suit properties by impleading the defendant, his wife Meenakshi, the plaintiff and others. It was dismissed. At the instigation of Poovalingam, the present suit is filed by the



plaintiff.

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6.On the basis of the pleadings, the trial court formulated the following issues.

1. Whether the plaintiff is entitled for adverse possession as she claimed?
2. Whether the plaintiff is entitled for the relief of declaration?
3. Whether the plaintiff is entitled for the relief of recovery of possession?
4. How far the suits namely O.S.Nos.54 of 1976, 18 of 1976 and 34 of 1995 pending on the file of the Principal District Munsif Court, Manamadurai and the suit in O.S.No.54 of 1996 on the file of the Sub Court, Sivagangai, will bind the present suit and its parties?
5. Whether the suit is bad for non joinder of necessary parties?
6. To what other reliefs?

7.To substantiate the case of the plaintiff, on her side she herself was examined as PW1 and two other witnesses were examined as PW2 and PW3. Exs.A1 to A6 were marked. On the side of the defendant he



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himself was examined as DW1 and one another witness was examined as DW2. On his side Exs.B1 to B17 were marked.

8.At the conclusion of the trial process the trial Court by the Judgment and Decree, dated 15.11.2002, dismissed the suit without any cost. Against which, appeal was preferred by the plaintiff before the appellate Court namely Sub Court, Sivagangai in A.S.No.1 of 2003. It came to be allowed by reversing the judgment and decree of the trial Court. The suit was decreed as prayed for with cost. Time for possession was fixed as two months. Against which, this second appeal is preferred by the defendant.

9.At the time of admission the following substantial question of law was framed.

1. Is not judgment and decree of the lower appellate Court vitiated due to the wrong application of law?

After that after hearing both sides this Court found that the following additional substantial question of law are also involved and the



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parties are heard in further.

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1. Is the plaintiff entitled to any relief in the suit in view of her conduct in approaching the court with unclean hands?
2. Can the plaintiff claim exclusive right and title over the suit properties after having submitted to a decree for partition under Ex.B12 which was instituted by P.W.3 in which present plaintiff as 5th defendant submitted the decree?

10. Additional Substantial Question of Law: 2

Before we take up the additional substantial question of law No.1, which is primary point, we can take up this question. So that the primary objection made by the defendant can be cleared.

11.As mentioned in the written statement filed by the defendant, one Poovalingam, who is examined as PW3 on the side of the plaintiff, has filed suit in O.S.No.34 of 1995 before the trial Court seeking partition, wherein, the plaintiff submitted to decree. Having submitted to decree now the present suit is filed as if she have exclusive right and possession over the property, which according to the defendant, the



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plaintiff is estopped from claiming the right.

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12.PW3 would say that the suit property originally belongs to plaintiff's husband Kunnaru, ancestrally. The plaintiff is his junior aunt. Suit filed by him was dismissed due to non joinder of necessary parties. Appeal was pending. During the cross examination, he would say that plaintiff's husband Kunnaru and his father were brothers. The suit was filed by him including the present suit property for partition. The property was allotted to plaintiff's husband in a partition. But, by mistake he included the present property in the suit.

13.Now we will go to the evidence of PW1 on that aspect. She would say that she has no knowledge about the suit in O.S.No.34 of 1995. Only at the instigation of Poovalingam the present suit was filed, which is also denied by them. Now the defendant would say that the plaintiff in this suit submitted to the decree. The decree copy is produced under Ex.B12, wherein we see that the defendant is arrayed as 11th defendant. The plaintiff Valliammai is arrayed as 5th defendant. In the operative portion of the decree, it is noted that this plaintiff namely



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Valliammai submitted to decree. But, however, the suit was dismissed after full trial. Judgment copy is also available. On the date of trial, it is stated by PW3 that appeal was pending. But, the fact remains that the suit for partition was filed by PW3. The plaintiff submitted to decree, wherein, this defendant is also arrayed as a party. Now it has been stated by the PW3 that he wrongly included the suit property in the suit. But, nowhere, it was stated by him either during the trial process before the trial Court at the time of hearing. Whether the property was deleted from the schedule at the appellate stage is not known. The plaintiff having appointed an Advocate and submitted to decree, now says that she has no knowledge, which *per se* is nothing but a false one. Since ultimately suit was dismissed and the finding of the Court is not available, no further discussion can be made by this Court. So this substantial question of law is left un answered.

14.Additional Substantial Question Law:1.

This is the core and main issue in the second appeal. The learned counsel for the plaintiff would contend that the suit itself is nothing but a fraudulent mis representation of facts. The plaintiff having participated



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in several suits concerning suit property, disowns knowledge; She has not stated any thing about the dispute in a vivid manner in the plaint.

15.We will go one by one. The fact that the suit property originally belongs to the plaintiff's husband ancestrally is admitted by the defendant during the course of the trial. Even though in the written statement no specific tracing of title by him is made. Since all these things were brought on record during the course of trial and became part of discussion by the trial Court and appellate Court, we can proceed on that line.

16.Kunnaru entered into othi with one Solaimalai. The othi deed is not produced before the Court not even certified copy of the same. But, we find a reference to the Othi in Ex.B1, sale agreement entered between the plaintiff Valliammai and her husband Kunnaru servai with one Rakkammal, which is mentioned in the written statement. This is dated 22.06.1975. It is mentioned that the property was mortgaged with Solaimalai, the husband of Rakkammal; Solaimalai died. So the mortgage right devolved on Rakkammal; The possession was in the



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hands of Rakkammal; The sale consideration was fixed at Rs.8,000/- and Othi amount of Rs.3,000 was discharged by way of this agreement and balance amount of Rs.1,000/- was agreed to be paid by Rakkammal within a stipulated time. Apart from that some other debts were also undertook to be discharged by Rakkammal from and out of the sale agreement amount. This document clearly indicates that the plaintiff is also a party.

17.Since agreement was not put into concluded sale, Rakkammal filed the suit in O.S.No.54 of 1976, before the Sub Court, Sivagangai for specific performance impleading the present plaintiff, Valliammai and two other persons, wherein, this plaintiff remained exparte. Only third defendant contested the matter. Suit was decreed as prayed for and defendants 1 and 2 namely the present plaintiff and Kunnaru servai were directed to execute sale deed by receiving sale consideration of Rs.1,000/- on or before 21.05.1977. What happened after that is not known. Whether sale deed was executed by this plaintiff in pursuance of the decree. Absolutely, there is no evidence.



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18. But the defendant would say that Rakkammal was in possession of the property and continued to enjoy the same by paying the kist, etc. for which, she was also granted with patta under Ex.B3. So according to the defendant, Rakkammal prescribed title over the property. But, this important aspect was not pleaded in the written statement. But, as mentioned above, those things were brought on record only during the course of trial.

19. Apart from the above said two suits, another suit in O.S.No.24 of 1976 was initiated by Seeni Servai against the Rakkammal, Kunnaru Servai and the present plaintiff namely Valliammai for permanent injunction, wherein also, the present plaintiff remained exparte. Suit was dismissed for default. For what purpose the above said suit was filed is not known. Apart from that Rakkammal filed suit in O.S.No.18 of 1976 against this plaintiff seeking the relief of permanent injunction.

20. Only certified copy of the order passed in I.A.No.217 of 1976 is produced and what happened to the suit is not known, wherein the plaintiff and her husband Kunnaru Servai, Seeni servai were added as



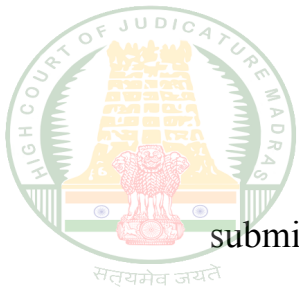
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parties. Interim injunction was granted on the ground that Rakkammal was in possession on the basis of Othi, even though there is an agreement of sale. The defendants are selective in producing details of the previous cases. They ought to have produce the judgment and decree, etc. in full form. Neither the trial Court nor the appellate Court has taken any note even to see those documents from its own file.

21.Whatever it may be, it is seen that several round of litigations took place starting from Othi up to suit for specific performance between the plaintiff and Rakkammal. But, having known all those facts, the plaintiff has not even taken care to mention any of those litigations and facts.

22.The plaintiff simply proceed as if the suit property devolved upon her by inheritance which *per se* is not proper and suppression of fact in a suit for declaration of title and recovery of possession is *per se* illegal.

23.Per contra, the learned counsel for the respondents would



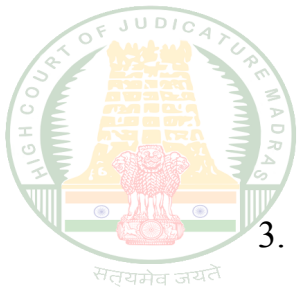
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submit that the plaintiff being an illiterate aged lady did not know or remember about all those previous litigations. But, this explanation cannot taken into consideration at all. Having participated in several litigations and that too a party in the sale agreement under Ex.B1, it is highly unbelievable that the plaintiff suffered from dementia. It is not her case that she is suffering from loss of memory.

24.It is further contended by the respondents that a simple decree for specific performance will not clothe the decree holder with any title or right over the property.

25.The learned counsel for the respondent would relied upon the following Judgments:

1. The Judgment of the New Delhi High Court made in the case of ***Rajan Singh Vs. Roshan in C.S.(OS)603/2019 & IAs No. 16365/2019, 1686/2020 & 1696/2020,***
2. The Judgment of the Allahabad High Court made in the case of ***Hakim Enayat Ullah Vs. Khalil Ullah Khan and another*** reported in ***AIR 1938 All 432*** and



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3. The Judgment of the Honourable Supreme Court made in the case of ***Rohi Kochhar Vs. Vipul Infrastructure Developers Ltd. And Orders in SLP 10169 to 10171 of 2008.***

26. So this contention on the part of the respondents is acceptable. But, the suit might have been filed on the basis of title by mentioning all those litigations. For what reason those material facts were suppressed could not be explained by the respondents.

27. Even though Rakkammal continued to be in possession of the properties right from the day of Othi and continued to be in possession also, but that itself did not create any title in her favour. As mentioned above, the defendant who claims right to the property through Rakkammal have also not stated any thing about the prescribed title by adverse possession by Rakkammal.

28. The plaint proceeded as if, on one fine day that is on 1998 the defendant encroached the property and continued to occupy the same as trespassers. But, the suit was filed only in the year 2001. The reason for



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the delay is not stated. The notice was issued only on 06.11.2000. This itself falsifies the case of the plaintiff that the defendant encroached the properties on one fine morning. We need not considered the tracing of title by the defendant since Will, based upon which, they claim title under Ex.B13 was not established. Simply because it was produced before the suit in O.S.No.74 of 1995, it will not partake the character of proof. So the defendant's title over the property is not established. But, as mentioned above, the plaintiff has not come to the Court with clean hands by mentioning all those material facts.

29.In the light of the above said, whether the decree passed by the appellate Court is sustainable is the only point to be considered.

30.Suppression of material facts were taken seriously by the Courts. The Honourable Supreme Court in the case of ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust*** reported in ***2012 (4) SCC (Civ) 612*** has observed that the plaintiff must aver all material facts, which are mandatory in nature for the purpose of getting the relief and if not, she is not entitled. Here as



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mentioned above, even in the reply notice sent by the defendant to the plaintiff all the earlier litigations were mentioned. In spite of those things, the plaint is very silent in regard to those material facts.

31.If such sort of pleadings are accepted, admitted and decree is granted, then, no sanctity can be attached to the Court proceedings. On the sole ground, without going into other aspects, the suit filed by the plaintiff is liable to be dismissed. The appellate Court has interfered into the judgment and decree of the trial Court without looking into those material facts, which dis-entitles the plaintiff to claim relief of declaration and recovery of possession. So this first additional question of law is answered that plaintiff is liable to be non suited for the suppression of material facts.

32.For the reasons stated above, the judgment of the appellate court is liable to be set aside. The main substantial question of law is answered accordingly.



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33. Accordingly, the judgment and decree of the appellate Court is

hereby set aside and the judgment and decree passed by the trial Court is

hereby restored. This second appeal is **allowed** with costs.

01.04.2025

Index : Yes / No
Internet : Yes / No
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To

1. The Sub Judge, Sivagangai.
2. The Principal District Munsif, Manamadurai.
3. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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