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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 556 of 2011
and MP No.1 of 2011
CNR: {HCMA010351822011}

C.R.Chinnasamy
S/o Ramasamy Gounder,
Aalaya Kattu Thottam Sadayampalayam Road
Erode 638 002.

..Appellant(s)

Vs

1. Bharani Raja,
   S/o Samiyapan,
   Mettan Kattu Valasu,
   Valiyarachal Village,
   Kangeyam Tk.

2. Senthilnayaki,
   W/o. Jagadeesan,
   No.1 Ram Nagar (Gandhi Nagar),
   Erode 638 004.

3. Kuppusamy,
   S/o Kuppanna Gounder
   243/3, Kumaran Nagar,
   Kumalankuttai Road, Erode 638 011.

..Respondent(s)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 22.10.2010 passed in A.S. No.69 of 2010, on the file of the Principal Subordinate Court, Erode, upholding the decree and judgment dated 06.04.2010 passed in O.S.No.847 of 2007, on the file of the Principal District Munsif Court, Erode.

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For Appellant(s): Mr.T.M.Hariharan

For Respondent(s): No Appearance

JUDGMENT

This second appeal has been preferred as against the decree and judgment dated 22.10.2010 passed by the Principal Subordinate Court, Erode, in A.S. No.69 of 2010. The appellant, who is the plaintiff has filed the suit in OS No.847 of 2007 on the file of the Principal District Munsif Court, Erode, for the relief of declaration to declare that the plaintiff has perfected his right and title to the suit property by adverse possession and consequential relief of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The said suit was dismissed by the trial court. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S.No.69 of 2010, on the file of the Principal Subordinate Court, Erode and the said appeal also dismissed by confirming the decree and judgment passed by the Trial Court. Aggrieved over the said decree and judgment, the present second appeal has been filed by the plaintiff.

2. 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

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second appeal would also be indicated.

3. The case of the plaintiff before the Trial Court is that originally the suit property belonged to his father, namely, Ramasamy Gounder as his self acquired property. In the month of October 1994, the plaintiff's father Ramasamy Gounder wanted to sell the suit property to his son-in-law Kuppusamy, who is the third defendant herein and the same was objected by the plaintiff. Inspite of the objection raised by the plaintiff, his father Ramasamy Gounder sold the suit property to his son-in-law Kuppusamy under a registered sale deed dated 31.10.1994. However, the possession was not handed over to the said Kuppusamy. The plaintiff is in possession and enjoyment of the suit property for more than 13 years and thereby his possession is actual, exclusive, hostile and continuous to the knowledge of Kuppusamy and thereby perfected his title through adverse possession. Further, plaintiff also constructed a residential house in the south eastern portion of the suit property. Further, the plaintiff has also dug a bore well in the suit property and enjoying the property as his absolute property. While so, on 28.09.2006, the defendants purported to have purchased the suit property for Rs.3,00,000/- through a registered sale deed from the said Kuppusamy, who has never been in possession of the suit property, with ulterior motive. So the defendants would not have derived any title to the suit property when their vendor has no such rights. Neither the

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defendants nor their vendor Kuppusamy have ever attempted to take possession of the suit property. While so, on 23.11.2007, the defendants have attempted to take forcible possession of the suit property from the plaintiff and the same was objected. Therefore, the plaintiff filed the suit.

4. The case of the defendants is that the suit is not maintainable. Originally, the suit properties belonged to the father of the plaintiff and he purchased the suit property and thereby, it is his self acquired property. The father of the plaintiff purchased the suit property through sale deed dated 07.05.1952 and he was in possession and enjoyment of the suit property and thereafter, he sold the suit property to his son-in-law Kuppusamy, through sale deed dated 31.10.1994. Pursuant to the sale, Kuppusamy was in peaceful possession and enjoyment of the suit property. Thereafter, the said Kuppusamy sold some portion of the properties to the defendants through sale deed dated 28.09.2006. The remaining portion of the property was enjoyed by the father of the plaintiff. While so, the father of the plaintiff entered into an agreement with the second defendant and the first defendant's father Samiyappan for a sum of Rs.5,60,000/- per acre and on the same day, an agreement was also executed on 03.08.2000 and also paid a sum of Rs.1,50,000/- as advance of sale price. In the meantime, the said Ramasamy Gounder died leaving behind his son, the plaintiff, daughters Kannammal, Paapathi @ Deivanai. However, even after the

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death of Ramasamy Gounder, his legal heirs evading from executing the sale deed. In the meantime, the plaintiff also filed the suit. The suit is bad for non-joinder of necessary parties, as all the legal heirs of Ramasamy Gounder have not been impleaded. Already the plaintiff's father Ramasamy Gounder sold the another property in SF No.943/1 through sale deed dated 31.10.1994 and the same has not been questioned by the plaintiff. Therefore, there is no cause of action and the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court framed the following issues

"(i) Whether the plaintiff is entitled to the suit property by way of adverse possession ?

(ii) Whether the plaintiff is entitled to decree for declaration ?

(iii) Whether the plaintiff is in possession and enjoyment of the suit property ?

(iv) Whether the plaintiff is entitled to decree for permanent injunction ?

(v) To what relief the plaintiff is entitled to?"

6. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 to PW3 were examined and marked Ex.A1 to Ex.A10. On the

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side of the defendants, DW1 and DW2 were examined and no documents have been marked. The Commissioner Report and Plan were marked as Ex.C1 and Ex.C2 ; third party documents were marked as Ex.X1 and Ex.X2.

7. After analysing the evidence on both sides, the Trial Court dismissed the suit, vide decree and judgment dated 06.04.2010. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S.No.69 of 2010 before the Principal Subordinate Court, Erode, on various grounds.

8. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

(i) Whether the decision of the trial court that the plaintiff is not entitled to the suit property by way of adverse possession is correct ?

(ii) Whether the decision of the trial court that the plaintiff is not entitled to decree for declaration is correct ?

(iii) Whether the decision of the trial court that the plaintiff is not entitled in possession and enjoyment of the suit property is correct ?

(iv) Whether the decision of the trial court that the plaintiff is not entitled to the suit property to decree for permanent injunction is correct ?

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9. After hearing both sides and perusing the records, the First Appellate Court also dismissed the appeal by confirming the decree and judgment passed by the Trial Court. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the plaintiff.

10. Heard Mr.T.M.Hariharan, learned counsel appearing for the appellant.

11. The learned counsel appearing for the appellant would submit that the plaintiff, who is the appellant, filed the suit for declaration and permanent injunction. In fact, originally, the suit properties and other properties belonged to the father of the plaintiff, namely, Ramasamy Gounder. The said Ramasamy Gounder wanted to sell the property to his son-in-law Kuppusamy and the same was objected by the plaintiff. The plaintiff has been in possession and enjoyment of the suit property. Inspite of the objection raised by the plaintiff, the father of the plaintiff, Ramasamy Gounder sold the suit property to his son-in-law Kuppusamy through sale deed dated 31.10.1994. However, possession was not handed over to the said Kuppusamy. As the plaintiff has been in possession and enjoyment of the suit property, no possession was granted to Kuppusamy. While so, the said Kuppusamy sold the property to the defendants through sale deed dated 28.09.2006, but no possession has been granted to the defendants through the said sale deed. The plaintiff has been in possession and enjoyment of the suit property for more than 13 years and his possession is

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actual, exclusive, hostile and continuous to the knowledge of Kuppusamy and thereby the plaintiff has perfected his title by way of adverse possession. After purchase of the property, the defendant attempted to evict the plaintiff forcibly and thereby, the plaintiff filed the suit. In order to prove the case of the plaintiff, PW1 to PW3 were examined and marked Ex.A1 to Ex.A10. On the side of the defendants, DW1 and DW2 were examined and no documents have been marked. The Commissioner Report and Plan were marked as Ex.C1 and Ex.C2 ; third party documents were marked as Ex.X1 and Ex.X2. Therefore, the evidence of the plaintiff has proved in this case. However, the Courts below have failed to consider the evidences in proper perspective and dismissed the suit erroneously. The Courts below have failed to consider the continuous possession and enjoyment of the plaintiff for more than statutory period of 12 years. The Courts below have failed to consider that mere execution of a document will not affect the adverse possession. The Courts below have failed to consider that the possession adverse to that of the third respondent and the respondents 1 & 2 is categorically pleaded in the plaint and also proved through sufficient evidence. When the possession of the plaintiff is established through oral and documentary evidences the Courts below have committed serious error in holding that the possession of the appellant is not adverse to the owner. Therefore, the decree and judgment passed by the Courts below are liable to be set aside and prays to allow the second appeal.

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12. Despite ample chance given to the respondents, they have not appeared and argued the matter. Therefore, this Court, after hearing the appellant side and based on the available evidence, is inclined to pass judgment.

13. This Court heard the appellant side and perused the records.

14. In this case, it is admitted fact that originally the suit property and other properties belonged to the father of the plaintiff, namely, Ramasamy Gounder and he purchased the property through sale deed dated 07.05.1952 and also it is an admitted fact that the said Ramasamy Gounder sold one portion of the property to his son-in-law Kuppusamy, in turn, the said Kuppusamy sold the properties to these defendants 1 and 2. According to the appellant, though sale deed was executed in favour of Kuppusamy by father of the plaintiff, namely, Ramasamy Gounder through sale deed dated 31.10.1994, no possession was granted to him on the date of the sale deed in favour of Kuppusamy. As son of the original owner, the plaintiff has been in possession and enjoyment of the suit property. Therefore, the possession of the property is with the plaintiff and his possession is *nec vi, nec clam, nec precario*. Thereby, the plaintiff is entitled to the property by way of adverse possession. The plaintiff has adduced documents Ex.A1 to Ex.A10. Ex.A1 is the sale deed in the name of Kuppusamy ; Ex.A2 is the copy of the sale deed executed by Kuppusamy in favor of the defendants 1

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and 2 ; Ex.A3 to Ex.A6 is kist receipts ; Ex.A7 to Ex.A9 are electricity consumption charges and Ex.A10 is the agreement entered into between the father of the plaintiff with the second defendant and the first defendant's father Samiyappan. Further, Commissioner Report and Plan were also marked as Ex.C1 & Ex.C2 and third party documents were marked as Ex.X1 & Ex.X2.

15. On careful perusal of Ex.A1, which is the sale deed in the name of Kuppusamy, it revealed that there are recitals in respect of handing over the possession of the property to the purchaser. Therefore, the plaintiff's contention that he has been in possession and enjoyment of the suit property has not been proved through sufficient evidence. Though the plaintiff has examined witness PW1 and PW2, mere oral evidence is not sufficient to prove the possession of the plaintiff. The available pleadings and evidence are not sufficient to prove the adverse possession as claimed by the plaintiff. Further, the alleged purchase of the property by Kuppusamy, who has been impleaded as third defendant in this case, is dated 31.10.1994. In the meantime, the defendants 1 & 2 purchased the property on 28.09.2006, within the period of limitation and thereby, the possession of the plaintiff cannot be treated as adverse to the original owner of the property.

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16. It is well settled law that mere long possession is not sufficient to prove the adverse possession and the possession must be continuous, uninterrupted, with the knowledge of the original owner for more than 12 years. The said facts have to be proved with sufficient pleadings and evidences. In the instant case, according to the plaintiff he entered into possession on 01.11.1994, but he produced Ex.A3 and Ex.A4 dated 27.12.1995 and the suit was filed within 12 years. Further there is no evidence on the side of the plaintiff about the nature of possession. According to the plaintiff, he constructed house in the suit property, but no evidence about the particulars of the construction of house. It is true there are some discrepancies in the evidence of DW1 but those are minor discrepancies and no way affect the defendants case. Moreover it is well settled law that the plaintiff who filed the suit for declaration of title has to prove his case through substantive evidence and he cannot take advantage of weakenss of the defendant case. Therefore, the plaintiff has to prove that his possession is hostile to the original owner and he is in continuous possession for more than 12 years but available evidence shows that within 12 years the defendants 1 and 2 purchased the property and there is an interruption. As far as Commissioner Report and plan are concerned, it is well settled law that to ascertain the possession Advocate Commissioner cannot be appointed, thereby Ex.C1 and Ex.C2 are no way helpful to decide the possession of the plaintiff. Further the plaintiff himself admitted that after sale in favour of Kuppusamy, he restrained

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Kuppusamy from taking possession and he occupied the property, therefore, it is clear that his possession is unlawful possession. The plaintiff failed to prove the Animus Possidendi. The plaintiff failed to prove that he has been in possession and enjoyment of the property continuously and without any interruption by the defendants more than a statutory period of 12 years.

17. As per Article 65 of the Limitation Act, 12 years limitation period for adverse possession and thereby the plaintiff failed to comply the conditions for the period of limitation. Further, Ex.A2 also reveals that possession of the property was handed over to the defendants 1 and 2 through sale deed. Therefore, the plaintiff failed to prove his possession and thereby he is not entitled to the relief of declaration by way of adverse possession and also not entitled to consequential relief of permanent injunction. In this context, the Courts below correctly appreciated the facts and law and after considering the evidence on both sides, came to a fair conclusion that the plaintiff failed to prove his case and thereby he is not entitled to any relief through this suit. The above said findings of the Courts below are based on the available evidence and both the Courts below rendered concurrent findings and there is no illegality or perversity with the judgment of the Courts below. Moreover, this Court also carefully perused the entire materials available on record and including the ground of appeal. There is no substantial question of law involved in this case

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and thereby there is no scope to interfere with the concurrent findings of the Courts below and there are no illegality or perversity in the judgments rendered by the Courts below. Therefore, the second appeal has no merits and deserves to be dismissed.

18. In the result,

i. the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii. the decree and judgment dated 22.10.2010 passed in A.S. No.69 of 2010, on the file of the Principal Subordinate Court, Erode and the decree and judgment dated 06.04.2010 passed in O.S.No.847 of 2007, on the file of the Principal District Munsif Court, Erode, are upheld.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Principal Subordinate Court, Erode.

2. The Principal District Munsif Court, Erode.

3. The Section Officer, VR Section, High Court, Madras.

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P.DHANABAL, J.

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