



S.A(MD).No.687 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.04.2023

Pronounced on : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.687 of 2021
and C.M.P(MD)No.9153 of 2021

Mariyammal

.... Appellant/Appellant/Defendant

Vs.

1.Atchanna
2.Atchammal

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 28.02.2019 passed in A.S.No.45 of 2015 on the file of the Sub Court, Kovilpatti, Tuticorin District confirming the judgment and decree dated 04.07.2015 passed in O.S.No.199 of 2013 on the file of the District Munsif Court, Kovilpatti, Tuticorin District.

For Appellant : Mr.A.Arumugam
for Mr.S.Sadeskumar
For Respondents : Mr.K.Baalasundaram
Senior Counsel
for M/s.R.Ponkarthikeyan

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The defendant in the suit in O.S.No.199 of



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2013 on the file of the District Munsif Court, Kovilpatti is the appellant

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herein. The respondents are the plaintiffs in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2.(i) The suit was filed for permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties. The plaintiffs claimed that they are the owners of the suit schedule properties by virtue of a partition deed dated 21.11.2012 registered as document No.4574 of 2012. According to them, originally their father Perumal Nayackar was the owner of the suit schedule properties and patta No.764 was standing in his name for the suit schedule properties. According to the plaintiffs, their father Perumal Nayackar died on 14.08.1989 and even before his death, their mother Nachiyarammal died on 22.11.1987. Thereafter, the plaintiffs have partitioned the properties, which included the suit schedule properties under the aforementioned partition deed dated 21.11.2012 registered as document No.4574/2012.

2.(ii) According to the plaintiffs, the defendant has attempted to encroach upon the suit schedule properties belonging to the plaintiffs as the



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plaintiffs are residing in a different place and not in the Village, where the suit schedule properties located. According to them, having come to know that the defendant is attempting to encroach upon the suit schedule properties, they lodged a complaint with the Sub Inspector of Police on 20.07.2013 against the defendant. In such circumstances, the suit was filed for permanent injunction.

3. The defendant, as seen from the written statement filed by the defendant, states as follows:

i) The property originally belonged to Sankarappan and after his death, the legal heirs of Acha Nayackar and Perumal Nayackar entered into partition of the properties, which included the suit schedule properties.

ii) The suit schedule properties were allotted to Perumal Nayackar, the father of the plaintiff and other properties were allotted to Acha Nayackar and both peacefully enjoyed their respective properties;

iii) Acha Nayackar had only one son by name Subburaj, the husband of the defendant. According to the defendant, Perumal Nayackar approached Subburaj for developing business of the first plaintiff namely, Atchanna and offered the suit schedule properties for sale and the same was accepted by Subburaj;



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iv) On 06.06.1994, 29 years ago, Perumal Nayackar and the first plaintiff orally sold the suit schedule properties to Subburaj, the husband of the defendant for a sale consideration of Rs.27,000/-;

v) From the date of oral sale, Subburaj, the husband of the defendant was paying kist in his name and enjoying the suit schedule properties peacefully;

vi) After the death of Subburaj, the suit schedule properties and other properties were jointly enjoyed by his wife, the defendant in the suit and other legal heirs;

vii) The plaintiffs have no right over the suit schedule properties;

viii) After purchase on 06.06.1994 through an oral sale deed, the defendant's husband Subburaj has deepened the well measuring 23 gajam and has been using the same for his irrigation purpose;

ix) The defendant and her family members were enjoying ancestrally the properties situated at Villicheri Village bid-II in S.No.5/6-B, 5/6-D and 5/6-E and 9/3-C and cultivating crops over the same and irrigating through the well situated in S.No.5/6-E;

x) Since the defendant and other legal heirs of Subburaj are in possession and enjoyment of the suit schedule properties along with their ancestral properties for the past 28 years, the defendant has also raised a



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plea of adverse possession;

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xi) Since the value of the properties has gone up manifold times the defendant contends that the suit was filed by the plaintiffs with the object of extracting money from the defendant;

xii) Since the plaintiffs claim possessory right over the property, they ought to have filed a suit for declaration instead of a permanent injunction suit, which is not maintainable in law;

xiii) The plaintiff has not added the minor legal heirs of the defendant's husband as party defendants in the suit and hence, according to the defendant, the suit is bad for non-joinder of necessary parties.

4. Based on the pleadings of the respective parties, the trial court framed the following issues:

- a) Whether the plaintiffs are in legal possession of the suit schedule property?
- b) Whether the suit relief was valued properly by the plaintiff?
- c) Whether the plaintiff is entitled for the relief of permanent injunction as sought for in the plaint?
- d) To what other reliefs?



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WEB COPY 5. Before the trial court, the plaintiffs filed 9 documents, which were marked as Ex.A1 to Ex.A.9 and 2 witnesses were examined on their side namely, first plaintiff as P.W.1 and the second plaintiff as P.W.2. On the side of the defendant, 1 document was filed as Ex.B.1 series kist receipts dated 20.06.1993, 18.06.1994, 01.04.1997 and 23.02.1998 pertaining to patta No.1282 in respect of the suit schedule properties and other properties. On the side of the defendant, the Advocate Commissioner's report and plan were also marked as Ex.C.1 and Ex.C.2. On the side of the defendant, she was examined as a witness(D.W.1).

6. After giving due consideration to the oral and documentary evidence available on record, the trial court decreed the suit in favour of the plaintiffs by granting the relief of permanent injunction as sought for in the plaint by giving the following reasons:

a) The “well”, which is situated in S.No.5/6-E, is a common well for both the plaintiffs and the defendant, which is also admitted by the plaintiffs in their oral evidence and therefore, except the right for usage of common well situated in S.No.5/6-E, the defendant has no right in respect of the other portions in the suit schedule properties;



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b) Adverse possession more than 28 years over the suit schedule properties has not been proved by proving that she was in continuous possession of the suit schedule properties without any disturbance with enjoyment of the plaintiffs;

c) The oral sale in favour of Subburaj has to be rejected since any conveyance can be done only by way of a registered document and further no documentary evidence has been produced by the defendant to prove the oral sale;

d) Inconsistent pleas have been taken by the defendant, whereas the plaintiff proved their title over the suit schedule properties by virtue of the partition deed dated 21.11.2012 registered as document No.4574/2012 marked as Ex.A.1 as well as patta Nos.2101 and 1282 marked as Ex.A.2

7. Aggrieved by the judgment and decree of the trial court dated 04.07.2015 passed in O.S.No.199 of 2013, the defendant in the suit filed a first appeal before the lower Appellate Court namely, the Sub Court, Kovilpatti in A.S.No.45 of 2015. The lower Appellate Court has also rightly confirmed the findings of the trial court by dismissing the first appeal filed by the defendant by its judgment and decree dated 28.02.2019 passed in A.S.No.45 of 2015.



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WEB COPY 8. Admittedly, the defendant has not produced any documentary evidence to prove his possession over item No.1, item No.2 and Item No.3 of the suit schedule properties. On the contrary, the plaintiffs have produced a partition deed dated 21.11.2012 registered as document No.4574/2012 entered into between the first plaintiff and the second plaintiff, which has been marked as Ex.A.1 and they have also produced 2 pattas one is dated 19.11.2012 standing in their name for item Nos.1 and 2 of the suit schedule properties and another is patta No.1282 dated 19.11.2012 standing in the joint names of the plaintiffs and Subburaj in respect of Item No.3, which is a common well situated in S.No.5/6-E.

9. As per Section 54 of the Transfer of Property Act, transfer of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. Admittedly, even according to the defendant, the sale consideration for the subject property on 06.06.1994 was Rs.27,000/- and hence, only by way of a registered sale deed, the property can be conveyed. It has been alleged by the defendant that on 06.06.1994, Perumal Nayackar and the first plaintiff orally sold the suit schedule properties to Subburaj, the husband of the defendant for a sale



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consideration of Rs.27,000/-, which has been rightly rejected by the trial

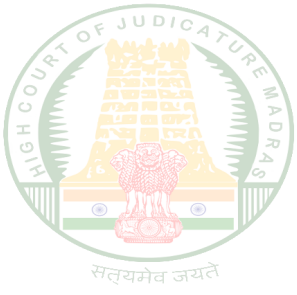
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court as no documentary evidence has been produced by the defendant.

Further, the alleged sale is only an oral sale and is an invalid sale. When the sale consideration is more than Rs.100/-, the sale can be made only by way of a registered instrument as it is mandatory under Section 54 of the Transfer of Property Act.

10. The defendant has also pleaded adverse possession in her written statement. To prove adverse possession, the defendant will have to prove primarily the following:

- a) The date from which the property was under the adverse possession;
- b) The defendant is required to prove the date from which the adverse possession of the property came to the knowledge of the owner;
- c) The defendant is required to prove that the possession of the property was peaceful and not be possessed by coercing the owner and should be in opposition to what the owner expects;



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d) The defendant also needs to prove beyond reasonable doubt before the court that the owner despite having knowledge of the defendant's possession, did not take any action against the defendant.

e) The defendant is also required to prove that the possession of the property was continuous without any interruption by the owners of the property or any other person.

11. Since the defendant has taken a plea of adverse possession in her written statement, as rightly held by the courts below, she has failed to prove the same by satisfying the court with regard to the above said basic requirements necessary to prove adverse possession.

12. The plaintiffs have absolutely proved to the satisfaction of the courts below that they are the absolute owners of the item No.1, Item No.2 of the suit schedule properties and in respect of item No.3, namely, well situated in S.No.5/6-E, is a common well belonging to both the plaintiffs and the defendant.



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13. Both the courts below have considered all the issues based on oral and documentary evidence and in accordance with law. They have rightly rejected the contentions of the defendant as pleaded in the written statement. The substantial questions of law framed by the appellant/defendant in the grounds of this Second Appeal are all issues, which have been rightly considered by the courts below and the contentions of the appellant/plaintiff have been rightly rejected by the courts below. There are no debatable questions of law involved in this Second Appeal, which require this Court's further interference under Section 100 C.P.C. Hence, there is no merit in this Second Appeal.

14. In fine, this Second Appeal is dismissed. Accordingly, the judgment and decree dated 28.02.2019 passed in A.S.No.45 of 2015 on the file of the Sub Court, Kovilpatti, Tuticorin District confirming the judgment and decree dated 04.07.2015 passed in O.S.No.199 of 2013 on the file of the District Munsif Court, Kovilpatti, Tuticorin District, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2023

Index : Yes/No
Internet: Yes/No
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To,

1.The Principal Sub Court, Kovilpatti.

2. The District Munsif Court, Kovilpatti.

3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.

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ABDUL QUDDHOSE, J.

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