

(2005) 02 MAD CK 0032
In the Madras High Court
Case No : Second Appeal No. 1065 of 1994

Neelavathi

APPELLANT

Vs

Shanmugam and Arulmigu Ramapiran Koil at
Senthamangalam

RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2005) 2 CTC 58

Hon'ble Judges : S.R. Singharavelu, J

Bench : Single Bench

Advocate : D. Durairaj, for the Appellant; R. Rajesh, for S. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singharavelu, J.—This Second Appeal is directed against the decree and judgment of the Sub Court, Kancheepuram, dated

18.02.1994 in A.S.No.26 of 1993, which reversed the decree and judgment passed by the District Munsif Court, Kancheepuram, on 25.09.1992

in O.S.657 of 1986.

2. While admitting the Second Appeal, the following substantial question of law was framed:

Whether the learned Subordinate Judge erred in law in construing the plea of adverse possession as inconsistent with plea of title under Ex.A1

failing to note that the plaintiff had merely set out alternative source of title which is not prohibited by law ?

3. This is a suit for declaration and injunction. The appellant is the plaintiff. The subject matter of suit is 0.32 cents in survey No.94/3-B of

Papankuzhi Village of Kancheepuram Taluk, patta number of which is 239. The plaintiff relied upon a settlement deed dated 25.07.1966, marked

as Ex.A-1, whereby the property was gifted to plaintiff by her father Nagappan. In the said document, Nagappan had mentioned two factors; one

is that, that property belonged to him by his purchase and the other is that he had earlier executed a Gift deed in favour of his wife on 09.03.1951

and that Alamelu, the wife subsequently died. Unfortunately, no particulars of the sale in favour of Nagappan were mentioned thereunder nor was

found in the course of evidence. Apart from the gift deed, the other documents that were filed are kist receipts through Exs.A-2 to A-5 and yet

another sale deed dated 26.11.1982 through Ex.A-8 in favour of one Inbasekaran, which refers to the property lying on the west of suit property.

There were three witnesses examined including the plaintiff on her side and one witness examined on the side of the defendants.

4. The 1st defendant claimed cultivating tenancy right under the 2nd defendant temple, in whose written statement, it was denied that the suit

property never belonged to Nagappan nor did he have any competency or capacity to execute a gift in favour of plaintiff. It was further contended

that neither the plaintiff nor her alleged predecessor was in possession and enjoyment of the same. On the contrary, the suit property was pleaded

as belonging to 2nd defendant temple inasmuch as one Kanniappa Naicker had purchased it in the capacity of the trustee of the said temple as

early as on 27.09.1934 under Ex.B-1.

5. A careful perusal of that document through Ex.B-1 would show that what Kanniappan purchased thereunder was 34 cents in Survey No.94/3.

Since it was purchased by Kanniappan not in his individual capacity but in the capacity of the trustee of the 2nd defendant temple, the title vested

with the temple as early as in 1934. The 2nd defendant temple had also produced the copy of chitta through Exs.B-12 and B-13 and the copy of

patta through Ex.B-14. Leaving Ex.B-2 patta as it had corrections in the survey number, we may have to rely upon Exs.B-12 to B-14, the chitta

and patta for the suit survey number. It has been argued by the counsel for the appellant that they were dated 12.09.1992 and 14.09.1992,

whereas decree was passed in the trial court on 25.09.1992. It is in that way documents pertained to the period subsequent to the suit. But later

developments and events subsequent to suit may also have to be taken into consideration. While plaintiff has no document of patta nor chitta, the

2nd defendant was able to file them under Exs.B-12 to B-14. This will go to show their possession.

6. Since Ex.A-1 is of the year 1966 and no document was produced to show that Nagappan, the plaintiff's father gifted it to his wife on

09.03.1951 and since no document of purchase in favour of Nagappan in regard to this property was produced and that the same was not

mentioned in Ex.A-1 and also since Ex.B-1 is 32 years older than Ex.A-1 document, it was correctly found by the learned Sub Judge that the

appellant / plaintiff has not established her title.

7. Again, when plaintiff had relied upon a particular document of title, namely, Ex.A-1 gift deed, in order to claim right and title to suit property, she

cannot claim it by adverse possession, because when once she claims title upon a particular document, then whatever right plaintiff claims would be

flowing if at all under that document, in which case there is no element of adverse nature of possession in order to make out a case of prescription

by title. Thus, the substantial question of law is answered against the appellant/plaintiff and I find no reason to allow this second appeal.

8. The Second Appeal is dismissed and decree and judgment passed by the first appellate court is confirmed. No costs.