



WEB COPY



S.A.No.7 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.7 of 2021

and

C.M.P.Nos.174 and 176 of 2021

1.Velmurugan,
2.Vasanthi,
3.Jayalakshmi

... Appellants

Vs.

1.Pavunu,
2.Sundaramurthy

... Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code to set aside the judgement and decree passed in A.S.No.53 of 2019 dated 23.07.2020 on the file of the Court of Subordinate Judge, Chidambaram confirming the Judgment and Decree passed in O.S.No.116 of 2005 dated 04.08.2018 on the file of the Court of District Munsif Cum Judicial Magistrate, Kattumannar Koil and decree the suit as prayed for by allowing this second appeal.

For Appellants : Mr. A.Muthukumar

For Respondents : Mr. S.Prem Raj Kumar



S.A.No.7 of 2021

JUDGMENT

The unsuccessful plaintiffs before the courts below are the appellants before this Court challenging the judgement and decree dated 23.07.2020 passed in A.S.No.53 of 2019 in and by which learned Judge has confirmed the judgement and decree passed by the District Munsif cum Judicial Magistrate, Kattumannar Koil in O.S.No.116 of 2005 dated 04.08.2018. The parties are referred in the same array in the trial Court.

2. The second appeal has been admitted on the following substantial questions of law.

“(a)When the second item of the suit property is the entire extent in R.S.No.435/2 and the plaintiffs' title is admitted, whether the Courts below erred in law in dismissing the suit for want of separate boundary descriptions for the said item?”



S.A.No.7 of 2021

(b)When the defendants had not claimed joint

WEB COPY *possession of the first item of the suit property, whether
the Courts below erred in law in dismissing the suit?”*

FACTS OF THE CASE:

3. The plaintiffs have filed the suit O.S.No.116 of 2005 on the file of the District Munsif cum Judicial Magistrate, Kattumannar Koil for the declaration that the suit properties belongs to the plaintiffs and consequently grant an ad-interim injunction restraining the defendants from interfering with the possession of the suit schedule properties by the plaintiffs.

4. It is the case of the plaintiff that the 1st item of the suit property is being enjoyed by them by putting a cow shed and in the 2nd item there is a thatched house where the plaintiff is residing. The remaining portion is enjoyed as a garden, garbage dump and to store waste,etc.,



S.A.No.7 of 2021

5. It is the case of the plaintiff that the suit properties are their ancestral properties. The 2nd item of the suit property is lying as a vacant site and the 1st and 2nd item form a single plot. The properties belonged to one, Narayanasamy. On his demise, the same was enjoyed by his son Rangasamy. Rangasamy had got the revenue records mutated in his name and the house was assessed to tax. Rangasamy died on 04.05.2021, leaving behind his wife (2nd plaintiff) and son (1st plaintiff). The plaintiffs 3 and 4 are his daughters. On the demise of Rangasamy, the plaintiffs become jointly entitled to the property.

6. It is the case of the plaintiff that the properties were being enjoyed continuously for over 50 years by the 1st plaintiff who has also prescribed title by adverse possession. The tax assessed in respect of the 2nd item of the suit properties have also been transferred to the plaintiffs who is remitting the house tax to the panchayat.

7. It is the case of the plaintiff that the plaintiffs 2 to 4 are residing



S.A.No.7 of 2021

along with the first plaintiff. The plaintiffs would further submit that defendants who have no right over the suit properties had approached the plaintiffs to sell the property, which was refused and therefore, they have attempted to encroach into the property and to demolish the house and the cow-shed. This attempt was made on 20.09.2005 and therefore, the plaintiffs have come forward with the suit in question.

8. The first defendant had filed written statement which is adopted by the defendants 2 to 3. In the said written statement, they would contend that the entire suit properties do not belong to the plaintiffs and they are not in enjoyment of the entirety. The defendants would submit that the 1st plaintiff's paternal grand-father namely Narayanasamy had a brother Boorasamy, who is the father of the first defendant. Narayanasamy and Boorasamy are the sons of the Rangasamy. The first defendant has 2 brothers namely Ramasamy and Rajavel. Ramasamy is no more. This defendant has one more daughter by name Senthamarai besides the 2nd defendant. The 3rd defendant is the son of the 2nd defendant. The



S.A.No.7 of 2021

defendants would submit that on the western side of the suit properties, there is a pathway to reach Vaniyam Street. They would contend that on 05.02.1902, the first defendant's paternal grand father Rangasamy had purchased the suit properties measuring on the western side east-west 20 human-feet and south-north 42 human-feet within specified boundaries. He was in enjoyment of the property and on his demise, the first defendant's father Boorasamy and the 1st plaintiff's paternal grand-father Narayanasamy divided the said property orally and in this oral partition, the northern portion was allotted to the 1st defendant's father and the southern portion to the Narayanasamy.

9. It is their case that the said Boorasamy and Narayanasamy had started enjoying their properties separately and after them, their legal heirs are enjoying the properties separately. On 15.05.1978, there was a partition between the 1st defendant and his brothers. In this partition, 20*21 feet which is the north western portion of the first item was allotted to the 1st defendant and he is enjoyment the same. On the eastern side of



S.A.No.7 of 2021

this property, there was the property belonging to one, Kakitha Iyer. The 1st plaintiffs' paternal grand-father Narayanasamy purchased that property from Kakitha Iyer and this property constitutes the second item of the suit property. The first item of the suit property which is a natham property was purchased by both Rangasamy and Narayansamy. They have annexed the plan showing the description of the properties purchased jointly by Rangasamy and Narayanasamy and the one purchased by Narayanasamy. It is their contention that the 1st item of the suit property has a thatched house in which the first defendant is residing over 30 years. The defendant would submit that first item of the property is the joint property of both Narayanasamy and Rangasamy wherein the first defendant's father was allotted the northern portion and the first plaintiff's paternal grand father was allotted the southern portion. The defendants would further submit that they have no claim over the property which belongs exclusively to the plaintiff which is situate to the east of their property. The defendants would therefore submit that the suit shall be dismissed.



TRIAL COURT:

WEB COPY

10. The trial court has framed the following issues:

“1. It is true that the suit properties are the absolute properties of the plaintiffs?

2. Whether the plaintiffs are entitled to get a permanent injunction as prayed for?”

11. The 1st plaintiff had examined himself as P.W.1 and marked exhibits Ex.A.1 to Ex.A.9. The second defendant had examined herself as D.W.1 and one Ramesh as D.W.2 and one Vijayakumar as D.W.3. The defendants have marked Ex.B.1 to Ex.B.4. Apart from this, Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2 respectively. The trial court on considering the evidence, came to the conclusion that the first item of the property was the ancestral property of the Rangasamy and therefore, the first defendant and the plaintiffs were equally entitled to the said property. The learned District Munsif cum Judicial Magistrate, Kattumannar Koil observed that although the



S.A.No.7 of 2021

defendants have admitted that the second item of the suit property was purchased by the 1st plaintiff's grand-father Narayanasamy from one Kakitha Iyer, no documents have been filed on the side of the plaintiff to show his title to the second item of the suit property and ultimately the suit is dismissed stating that the plaintiff has no proof regarding entitlement of the entire extent of the suit property.

12. Aggrieved by the above judgment and decree, the plaintiff had filed A.S.No.53 of 2019 on the file of the Sub-ordinate Court, Chidambaram and along with the said suit they had also taken out an application I.A.No.42 of 2020 for receiving the additional documents. The learned Sub-ordinate Judge by his judgment and decree dated 23.07.2020, dismissed the appeal and confirmed the judgment and decree passed by the trial court. The learned Sub-ordinate Judge had also taken note of the admission of the defendants that the second item of the suit property belongs to the first plaintiff's paternal grand-father Narayanasamy but however has failed to grant a relief with reference to the second item of the



13. It is aggrieved by the concurrent judgment and decree that the appellants are before the Court and the same has been admitted on the questions of law set out supra. The defendant has made the following statements in the written statement which is herein below extracted:

(i)As follows with reference to the suit first item of the property :

“இத்துடன் தாக்கல் செய்யப்பட்ட பிராதில் தாவா சொத்துக்களை

ABGHCD என காட்டப்பட்டுள்ளது. அதில் தாவா முதல்

இனச் சொத்தினை ABFCD என காட்டப்பட்டுள்ளது.

அப்பகுதியில் அடங்கிய சொத்தே இப்பிரதிவாதியின் தந்தை வழி

பாட்டன் ரெங்கசாமி என்பவரால் 05.02.1902 தேதியில் கிரயம்

பெறப்பட்ட சொத்தாகும் அதில் இப்பிரதிவாதியின் தந்தைக்கு

பாகத்தில் கிடைத்த பகுதி வரைபடத்தில் ABFE என

காட்டப்பட்டுள்ளது. அப்பகுதி தாவா முதல் இன சொத்தில்

அடங்கிய வடபுர பாதியாகும். அதனையே இப்பிரதிவாதிக்கும்

அவரது சகோதரர்களுக்கும் ஏற்பட்ட 15.02.1978 தேதிய பாக



S.A.No.7 of 2021

அட்டவணைபடி இப்பிரதிவாதிக்கு ஒதுக்கப்பட்டு அப்பகுதியினை இப்பிரதிவாதியும் அவரது மகனான இரண்டாம் பிரதிவாதியும் அவரது மக்களும் சேர்ந்து அனுபவம் செய்து வருகிறார்கள். தாவா முதல் இன சொத்தில் வடபுரத்தில் இப்பிரதிவாதியின் கூரைவீடு உள்ளது. அதற்கான வரி விதிப்பு இப்பிரதிவாதி பேரில் ஏற்பட்டு அதற்கான வீட்டு வரியும் இப்பிரதிவாதியால் செலுத்தப்பட்டு வரப்படுகிறது”.

(ii)As follows with reference to the suit second item of the property :

“மேற்கூறும் 05.02.1902 தேசிய கிரய சொத்திற்கு கீழ்புறமுள்ள காகித அய்யாசாமி என்பவரின் சொத்தைப் பொறுத்து பின்னிட்டு கிரய மாற்றங்கள் ஏற்பட்டுள்ளது. அதன்படி அச்சொத்தை 1ம் வாதியின் தந்தைவழி பாட்டன் நாராயணசாமி என்பவர் கிரயம் பெற்றுள்ளார். அக்கிரய சொத்தே தாவா 2வது இனச் சொத்தாகும். மேற்படி கிரயங்கள் அனைத்தும் பிராதில் வாதிகளால் வேண்டுமென்றே மறைக்கப்பட்டள்ளது.”

14. Therefore, the defendants have clearly and categorically admitted the title of the plaintiff's grand father to the suit second item of the property wherein over which they have not made any claim. Despite



S.A.No.7 of 2021

this admission on part of the defendant's, it is rather strange that both

Courts below have non-suited the plaintiff even with reference to the second item of the property. It is axiomatic principle of law that when a fact is admitted, the same need not be proved. Therefore, the judgement and decree of the Courts below with reference to the dismissal of the second item of the property has to be necessarily set aside and accordingly question of law No:1 was answered in favour of the plaintiffs.

15. It is the case of the defendants that with reference to the first item of the property, the northern portion was allotted to the first defendant's father Boorasamy and the southern portion to the plaintiff's grand-father, Narayanasamy. The plaintiff has not been able to disprove the said contention of the defendants, in fact, along with the written statement the defendant had filed a sketch showing the enjoyment of the properties by both the plaintiffs and the defendants and the same has not been countered and refuted by the plaintiffs. Added to that, the plaintiff has not been able to establish his enjoyment of the entire extent of the first item of the suit property. The defendants have filed Exhibits B3 and B4 to



S.A.No.7 of 2021

show their enjoyment of the northern portion of the first item of the suit property. Therefore, the defendants have admitted that the first item of the suit property jointly belongs to both themselves as well as the plaintiff and that the properties had been partitioned even during the lifetime of their grand father which enjoyment is clearly evidenced by the sketch filed along with the written statement.

16. Therefore, the suit is partly allowed. There shall be a decree in respect of plaintiff's title to the second item of the property and the southern portion of A Schedule property is declared and consequently, there shall be an order of interim injunction restraining either parties from interfering with the possession of properties by the other. The sketch filed along with the written statement shall form part of the decree. The plaintiff is entitled to deed and injunction in respect of the property described as BGHCFED in this plan attached to the written statement. The property described as ABFE in the plan attached to the written statement is declared to be the property of the defendant. The plan attached to the written



S.A.No.7 of 2021

statement shall form part of the decree.

WEB COPY

17. In the result, the Second Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa/apd

To

- 1.The Sub Judge,
Chidambaram
- 2.The District Munsif Cum Judicial Magistrate,
Kattumannarkoil,
3. The Section Officer, V.R.Section, High Court, Madras



WEB COPY



S.A.No.7 of 2021

P.T.ASHA, J.,

ssa/apd

S.A.No.7 of 2021
and
C.M.P.Nos.174 and 176 of 2021

06.10.2023