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S.A.No.362 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.362 of 2007

1. M.A.V.Narayana Rao (died)

2. N. Madhava Rao

3. N. Anusuya Devi

...

Appellants

Vs.

1. S.Sankaran

2. S. Subramanian

3. M. Muruga Barathy

4. S. Nirmala Devi

...

Respondents

(Appellants 2 & 3 and 4th respondent
brought on record as LR's of the deceased
first appellant viz, M.a.V.Narayana Rao,
vide Court order dated 01.07.2021 made in
CMP Nos.9937, 9941 & 9943 of 2019 and
CMP Nos.7837,7841 & 7842 of 2021)



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Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree passed in A.S.No.63 of 2005 on the file of the Principal Sub Court, Chengalpattu dated 08.12.2005 confirming the judgment and decree passed in O.S.No.97 of 1995 on the file of the District Munsif Court, Chengalpattu dated 24.01.2005.

For Appellants : Mr. K. Hariharan

For respondents : R1 to R3 -set exparte

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 08.12.2005 passed by the learned Principal Sub Judge, Principal Sub Court, Chengalpattu in A.S.No.63 of 2005, confirming the Judgment and Decree dated 24.01.2005 passed by the learned District Munsiff, District Munsif Court, Chengalpattu in O.S.No.97 of 1995.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.



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3. The plaintiff in O.S.No.97 of 1995, on the file of the District Munsiff Court, Chengalpattu has filed this Second Appeal.

4. The averments stated in the plaint are that originally, the suit property comprised in survey No.49 at Muttukadu Village, Chengalpattu Taluk, was allotted to Iyyalu Naidu, the father of plaintiff, vide Decree and Judgment of High Court, Madras dated 22.01.1907 in the partition suit in O.S.No.206/1996. The suit land, which is now sub-divided as survey No.49/2C, 0.26.5 H.A. is part of the Survey No.49 allotted to the share of the father of the plaintiff. The plaintiff is the only heir of Iyyalu Naidu. He constituted a joint family with his son Madhava Rao. The plaintiff is the joint family Manager and filed this suit as such Manager of the joint family. The plaintiff has absolute title and possession to the suit property. He and his predecessors have acquired title to it by adverse possession and prescription also. However, the Patta No.61 in respect of the suit land stands in the name of the plaintiff and one another by name Gopalakrishnan, who is an utter stranger to the suit property. The plaintiff has objected to such grant of joint patta and the Tahsildar, Chengalpattu is now enquiring the matter. A road has been formed in a portion of the suit property which occupy about 0.20 cents. The first defendant has no manner of right, title, interest or possession to the suit property. He attempted to fence the suit



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property on 12.2.1995 which was successfully resisted by the plaintiff. The first defendant is still threatening to trespass over the suit property, which is in possession of plaintiff. He is attempting to make a claim under Gopalakrishnan, whose name is also introduced in patta no.61. The said Gopalakrishnan migrated to America more than 40 years ago. The plaintiff reliably learns that the said Gopalakrishnan does not exist on today. It appears that the defendant is attempting to manipulate documents by forging the signature of Gopalakrishnan. Hence, the suit.

5. The defendants had filed written statement contending that the allegations stated in the plaint are false. The plaintiff has no title to the suit property. If Mr.Gopalakrishnan is an utter stranger, the plaintiff must explain and he should have fought with him for perfecting his title. When the dispute between the plaintiff and the said Gopalakrishnan is yet to be settled and decided, this suit is not maintainable against the first defendant, who had nothing to do with the suit property. The suit property and the other extent in S.No.49/2 (total extent being 2.47 acres) was purchased by T.Sarangapany lyengar in Court auction in O.S.No.331/1913 dated 25.9.1934 and confirmed by the High Court of Judicature of Madras on 29.03.1935. Later the sale have been effected by Sarangapani lyengar and his family to several parties. The present



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purchaser, in S.No.49/2C of an extent of 20 cents on the North and 20 cents in the same survey number on the south, is one Mr.Muruga Barathy, the third defendant, who is son of S.Subramanian and the middle extent of 20 cents is purchased by S.Subramani, second defendant. Therefore, the total extent of 60 cents in S.No.49/2C is in the possession and enjoyment of the said persons from their purchase on 13.07.1994 and earlier to that their predecessors were in title from the year 1935. Therefore the question of adverse possession etc. does not arise for the plaintiff. The allegation that Gopalakrishnan migrated to America etc. are all false. The allegation that the first defendant is manipulating records etc, are all defamatory. The first defendant never attempted to trespass over the suit property at any time, as he has nothing to do with the suit property. With regard to the suit property and the construction over the same, the first defendant has nothing to do with it. The plaintiff has wantonly filed this suit against the defendant, though he knows very well that he has no title to the suit property and he well know who is constructing over the suit property. Under these circumstances the suit is vexatious and has no merits. During the pendency of the suit, no construction was put up by this respondent and the same is false and thus, pleaded to dismiss the suit.



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6. The defendants 2 and 3 have filed their written statement raising the same contentions as those of the first defendant.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. வழக்கு சொத்துகளில் வாதிக்கு உரிமை மூலம் சித்தித்துள்ளதா?

2. வழக்குத் தாக்கல் செய்த காலத்தில் வழக்கு சொத்தின் சுவாதினம் வாதி வசம் இருந்ததா ?

3. வழக்கு சொத்தில் வாதிக்கும் வாதியின் முன்னோர்களுக்கும் எதிரிடை அனுபோகத்தின் மூலம் உரிமை மூலம் சித்தித்துள்ளது என்பது உண்மையா ?

4. 13.07.1994 அன்று பிரதிவாதிக்கு ஏற்பட்ட கிரைய ஆவணம் உண்மையானதா ? செல்லத்தக்கதா ? அது வாதியை கட்டுப்படுத்துமா ?

5. வாதி விளம்புகை பரிகாரம் பெற அருகமானவரா ?

6. வாதி நிரந்தர உறுத்துக் கட்டளைப் பரிகாரம் பெற அருகமானவரா ?

7. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரங்கள் என்ன ?

8. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined himself as PW1 and one Velu and Varadharajan were examined as P.W.2 and P.W.3. 21 documents were marked as Ex.A.1 to Ex.A.21. On the side of the defendants, the first defendant examined himself as DW1 and 9 documents were were marked as Ex.B.1 to Ex.B9. Advocate Commissioner's report and plan were marked as Ex.C.1 to Ex.C.4.



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9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court, by its judgment and decree dated 24.01.2005, dismissed the suit. Aggrieved over the same, the plaintiff has preferred the First Appeal in A.S.No.63 of 2005 before the Principal Subordinate Court, Chengalpattu. The First Appellate Court, after considering the entire materials, concurred with the findings of the Trial Court, dismissed the appeal by a judgment and decree dated 08.12.2005. Now, challenging the same, the present Second Appeal has been filed.

10. The second appeal has been admitted on the following substantial question of law:

1. Can the patta under Exs.A1 and A17 merely recording the name of Gopalakrishna as joint name holder alone confer any title to Gopalakrishnan in the absence of any independent title deed ?
2. In the absence of pleading and proof by the side of the defendants as to how Sarangapani derived title from court auction purchase in the year 1935 can the Courts below find title in favour of the defendants and ignore the title of the plaintiff being traced from 1906?
3. The Court auction in the year 1935 itself being on behalf of



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Balakrishnan and others, who are also parties to the partition decree in C.S.No.206 of 1906 in Ex.A.4, are the defendants not estopped from claiming any independent title ?

4. Is the suit and enquiry regarding title between persons claiming under the parties to the partition decree not hit by and prohibited under Section 11 CPC on the Principles of resjudicata ?

11. The learned counsel appearing for the appellants contended that the judgment and decree of the Trial Court as well as the First Appellate Court are against law, contrary to the facts and against the weight of evidence and probabilities of the case. The Trial Court and the First Appellate Court overlooked the fact that the first appellant's father and ancestor A.Iyyalu Naidu having been allotted a definite divided share of “A” schedule property in a suit for partition in C.S.No.206 of 1906 on the original side of the High Court, Madras and the “A” schedule of property in Item 9 specifically referring to serial No.49 to an extent of 2 acres 2 cents at Muttukadu Village. Therefore, he is a title holder in respect of the property. The defendants, being a recent purchaser of the year 1994 by way of sale deed, failed to produce their title to his vendors and failed to prove the title of Balaiya Naidu from Sarangapani as



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early as in the year 1935. The Sarangapani alleged to have purchased the property in the year 1935 in a Court auction sale. There is no evidence to show that the Gopalakrishnan got title to survey No.49/2. The joint patta issued in the name of Gopalakrishnan in Ex.A1 and other patta Ex.A17, Adangal Ex.A.18 do not provide better title to Gopalakrishnan. In the absence of anterior title deed, plaintiffs' ancestor filed objection to the Court Auction at the relevant point of time., i.e., of the year 1934. The Courts below failed to see that survey No.49 was subsequently sub-divided into 7 and more sub divisions and it should have been taken note that the plaintiffs' claim of 65 cents of land in Survey No.49/2C is the only properties for the claim of the title and the Courts below failed to give any acceptable reason for ignoring the plaintiffs' title deed Ex.A.4. The reasoning of the Courts below that the Gopalakrishnan name is also found in the patta, is not giving title to Gopalakrishnan. Further, the learned counsel reiterated the grounds raised in the grounds of appeal and thus pleaded to allow the second appeal and declare the title over the plaint schedule properties.

12. Even though, notice served on the respondents/defendants and their names also printed in the cause list, they neither appeared in person nor engaged any counsel on their behalf and hence, they were called absent and set



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exparte on 28.06.2024.

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13. I have considered the matter in the light of the submission made by the learned counsel for the appellants and perused the materials available on records carefully.

14. On verification of the material evidence on record, it is seen that the plaintiff M.A.V.Narayana Rao filed the suit against the defendants, namely, M.Sankaran, M.Subramanian and S.Murugabarathi for declaration, permanent injunction or in the alternative for vacant possession of the suit property after demolishing the construction put up thereon by the defendants during the pendency of the suit and in violation and disobedience of orders of temporary injunction granted by this Court.

15. In this case, the plaintiff claim title over the property at Muttukadu Village, Kelambakkam Firka, Chengalpattu Taluk in S.No.49/2C to an extent of 0.26-5 together with borewell thatched hut and service connection No.393.

16. The contention of the plaintiff is that the suit property originally



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comprised in Survey No.49 at Muttukadu Village, Chengalpattu Taluk was allotted to Iyyalu Naidu, the father of the plaintiff along with the properties in the partition suit in O.S.No.206 of 1906 on the file of the High Court of Madras under the decree and judgment dated 22.01.1907, which is evidenced by Ex.A.4. On perusal of Ex.A4, it is noticed that “A” schedule property, in which, land in survey No.49 at Muttukadu Village for an extent of 2 acre 2 cents was allotted to Iyyalu Naidu and the other defendants 1 to 11 in the suit were together entitled for other half share in the properties and G.Narayanaswami Chetty, who is 12th defendant in the said suit was directed to discharge the debt of Rs.6368.50.

17. Further on perusal of records and the final decree, it is noticed that 11th defendant, Rajagopala Naidu in the said partition suit, was allotted “F” schedule, in which, he was allotted 2 acres 3 cents in Survey No.49, Muttukadu Village. Further, it is noticed that Northern side of Survey No.49 was allotted to Iyyalu Naidu and the southern side was allotted to the defendants in the said suit. Further, on perusal of records, it is noticed that after final decree, there is no division of northern side 2 acres 2 cents to the Iyyalu Naidu and 2 acres 3 cents on the same survey number to Gopalakrishnan. After final decree, no records reflects the division by meats and bounds and taking possession in



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pursuance of the final decree. Therefore, it is clear that there was no physical division of land in pursuance of final decree proceedings or execution proceedings, and it shows no division of northern and southern portion.

18. Further, on perusal of records, it reveals that in the year 1935, one Sarangabani purchased the properties, with regard to Survey No.49 Muttukadu Village in Court Auction Sale effected by Official Receiver, Chennai, which is evidenced by Ex.B.1, dated 21.05.1935. The said Court Auction Sale was conducted in O.S.No.331 of 1913. In this case, Auction Proceedings were produced. Admittedly, Auction Sale was effected only against the defendants 1 to 11 as described in the partition decree in C.S.No.206/1906, which is evidenced by Ex.A4.

19. Further, on perusal of records, it is noticed that admittedly auction sale was effected only against defendants 1 to 11 families as described in partition decree in C.S.No.206 of 1906, marked as Ex.A.4. When the Official Receiver attempted to bring part of S.No.49 for sale of 2 Acres and 45 cents in excess of allotted 2 Acres and 3 cents alone, with all the defendants in partition decree as debtors it was notified as if situated on Southern side. Then plaintiff Iyyaloo Naidu registered his objection to the Official Receiver as per Ex.A.7



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and Ex.A.8, objected to the proclamation for sale and wanted the Official Receiver to effect necessary corrections.

20. Further on perusal of records, it reveals that the sale executed in favour of Sarangabani by Official Receiver on 21.05.1935 as per the sale certificate Ex.B.1 was not challenged by the plaintiff and his father Iyalu Naidu so far. Hence, the sale certificate Ex.B.1, dated 21.05.1935 become absolute one. Further, the evidence reveals that Sarangabani sold the property to Saraswathi Ammal on 20.10.1962, which is evidenced by Ex.B.2. Further Saraswathi Ammal sold the property to Pookot Gopalakrishnan on 13.02.1967, which is evidenced by Ex.B.3. In pursuance of the same, patta has been given in favour of Gopalakrishnan, which is evidenced by Ex.B.4 and from 1951 to 1994, it stands in the name of Gopalakrishnan, which is evidenced by Ex.B.5. The above said Gopalakrishnan executed a Power of Attorney to one Sundaraj on 15.02.1994, which is evidenced by Ex.B.6 and in pursuance of the Power, Sundaraj executed sale deed to the defendants 2 and 3 on 13.07.1994, which is evidenced by Ex.B.7,8 & 9.

21. The plaintiff filed EX.A1 patta which stands in the name of Gopalakrishnan and Narayanan Rao. Apart from this, there are no documents



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filed by the plaintiff to show that the property in Survey No.49/2C to an extent of 0.26.5 acres is owned by him. There is no records to show that, when the survey no.49 was subdivided into 49/2C. In the absence of any evidence to show that the plaint schedule property was sub-divided as 49/2C to an extent of 0.26.5 acres and in the absence of any documents to show that the plaintiff is having title over the property in Survey No.49/2C to an extent of 0.26.5, the plaintiff cannot get declaration of his title over the plaint schedule properties based upon the partition decree dated 22.01.1907. After passing of final decree on 22.01.1907, there is no document reflecting the title of the plaintiff over the plaint schedule properties in survey no.49/2C in respect of 0.26.5 acres and in the absence of any evidence when it was subdivided from survey No.49, it is very difficult to confirm the title upon the plaintiff for the plaint schedule properties in survey no.49/2C. Admittedly, Survey No.49 was sub divided into 7 sub divisions. There is no evidence, as to whether the properties allotted to the plaintiff as per the partition decree Ex.A.4 comes under the survey No.49/2C. Therefore, in the absence of any evidence to show that the properties allotted to the plaintiff's father under partition decree Ex.A4 is 49/2C, i.e. Plaint schedule Property, the plaintiff cannot claim title over the plaint schedule properties. Further, there is no explanation from the plaintiff with regard to the joint patta issued to Gopalakrishnan in ExA1. Under these circumstances, it



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cannot be rejected stating that Gopalakrishnan has no property in Survey

No.49.

22. Ex.A18 Revenue records reflects that for the property in Survey No.49/2C Gopalakrishnan name is found upto 1411 pasalai. Thereafter from 1412 pasalli to 1414 joint patta has been issued in the name of plaintiff and Gopalakrishnan. Therefore, the plaintiff has failed to produce sufficient evidence that he is having title over the plaint schedule property and no document is filed and there is also no satisfactory evidence to prove his possession over the plaint schedule properties. Therefore, the Trial Court and the First Appellate Court rightly dismissed the suit.

23. When the plaintiff filed the suit for declaration and consequential injunction, he has to prove his title over the plaint schedule property and also his possession. Any defects in the defendants' defence will not be helpful to the plaintiff to declare his title over the plaint schedule properties. Therefore, the absence of pleading and proof, on the side of the defendants, as to how Sarangabani derived by the purchase in the year 1935 is not helpful to the plaintiff, But in this case, it is clearly proved that Sarangabani Purchased the property from the Court auction in the year 1935 evidenced by Ex.B.1. The



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plaintiff failed to prove his title over the plaint schedule properties after passing final decree in the year 1907 as per Ex.A.4. No irrelevant fact has been considered and no evidence has been misconceived by the Trial Court as well as the First Appellate Court and the findings of the Courts below are not erroneous one. Therefore, the findings of the Trial Court as well as the First Appellate Court are only based on the evidence produced by the parties and no evidence is misconceived. The findings of the Courts below are not perverse or against law and there is no ground for interference. There is no merit in the Second Appeal. No substantial question of law involved in this case, the second appeal is not maintainable.

24. In the light of the abovesaid factors, it is found that the Courts below, on a proper appreciation of the materials placed on record, and both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had rightly dismissed the suit and the substantial question of law formulated in the second appeal is, accordingly, answered against the plaintiff.



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25. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No

31.07.2024

mrp

To

- 1.The Principal Sub Court,
Chengalpattu.
2. The District Munsif Court,
Chengalpattu



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V.SIVAGNANAM, J.

mrp

Pre-Delivery Judgment made
in S.A.No.362 of 2007

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