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S.A.No.1341 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2024

PRONOUNCED ON : .07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1341 of 2010

1.Ramasamy (Died)
2.Perumal
3.Rajammal

...

Appellants

Vs.

1.Lakshmaan
2.Kamalanathan
3.Sathianathan
4.Radhabai
5.Muruganandhan
6.Vijayasundari
7.Arulvel

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the learned Subordinate Judge, Athur in A.S.No.13 of 2008 dated 22.03.2010 confirming the Judgment and Decree of the learned District Munsif, Athur in O.S.No.280 of 1990 dated 31.03.2008.



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For Appellants : Mr.S.Kaithamalai Kumaran
For Respondents : Mr.L.Mouli (for R3 & R4)
Mr.V.Rajesh (for R1, R2, R5 to R7)

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree of the learned Sub Judge, Athur in A.S.No.13 of 2008 dated 22.03.2010 confirming the Judgment and Decree of the learned District Munsif Court, Athur in O.S.No.280 of 1990 dated 31.03.2008.

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

3.The plaintiff in O.S.No.280 of 1990 on the file of the learned District Munsif Court, Athur is the appellant herein.

4. The case of the plaintiff, in brief, is that the plaintiff/ Ramasamy filed a suit for bare injunction against the other defendants. The plaintiff is the son of Veeran. The said Veeran had two brothers namely Sengan and Thoongani. Thoongani had no issues. The legal heirs of Sengam were living in Ceylon. The suit properties are the ancestral joint family properties of the plaintiff and his



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relatives who were living in Ceylon. The entire properties are in the possession and enjoyment of the plaintiff. The defendants who are the neighbours of the plaintiff, are trying to trespass into the property. Therefore, plaintiff filed a suit against defendants.

5.The defendants contested the suit, denied the allegations in the plaint and filed a written statement contending that the suit properties were originally owned by one Lakshmanan. While Lakshmanan left India, he gave possession to the defendant, on condition that, defendants must deliver the possession and enjoyment of the suit properties immediately after his returning to India and also pay kists due to be paid to the Government. Therefore, defendants are in the possession and enjoyment of the property for more than 45 years before filing the suit. The plaintiffs have no right, interest or possession over the said suit properties. Thus, pleaded to dismiss the suit.

6.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. தாவாசொத்துக்கள் வாதியின் வசத்திலும் அனுபவத்திலும் உள்ளது என்ற கூற்று உண்மையா?
2. தாவா சொத்துக்கள் ஆதியில் செங்கான் மகன் லட்குமணன்



என்பவருக்கு பாத்தியப்பட்ட சொத்துக்கள் என்ற கூற்று சரியா?

3. தாவா சொத்துக்கள் லட்சுமணன் என்பவரிடமிருந்து காலம் சென்ற 1-ம் பிரதிவாதிக்கு கிடைத்து அவர் அனுபவத்திலும் சுவாதீனத்திலும் இருந்து வந்தது என்ற கூற்று உண்மையா?

4. தற்போது தாவா சொத்துக்கள் 5 முதல் 9 வரையுள்ள பிரதிவாதிகள் வசத்திலும் அனுபவத்திலும் உள்ளது என்ற கூற்று சரியா?

5. வாதி வழக்குரையில் பிரதிவாதிகளுக்கு எதிராக கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

6. உபய தரப்பினர்களுக்கு கிடைக்கும் பரிகாரம் என்ன?"

7. Before the Trial Court, in support of the plaintiff's case, PW 1 and PW4 were examined and 14 documents were marked as Ex.A.1 to Ex.A.14. On the side of the defendants, DW1 to DW8 were examined and 38 documents were marked as Ex.B.1 and Ex.B-38.

8. Upon considering the evidence and documents, the trial Court dismissed the suit.

9. Aggrieved over the same, the plaintiff had filed A.S.No.13 of 2008, before the Sub Court, Athur. The First Appellate Court, after considering the entire materials and evidence on record confirmed the Judgment and Decree of the trial Court and dismissed the appeal. Aggrieved by the same, the plaintiff has filed the present second appeal.



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

“a) Are the Courts below justified in embarking upon an enquiry regarding title to the suit property whereas the suit is filed for a bare injunction?

b) When the documents Ex.A.1 to Ex.A.14 coupled with oral evidence of P.W.1 to P.W.4 would establish the appellant's possession of the suit property on the date of suit, are the Courts below justified in dismissing the suit for injunction?

11. The learned counsel appearing for the appellants contended that the trial Court and the First Appellate Court failed to consider the case properly, as the suit is filed for bare injunction and it need not be investigated about the title of the plaintiff over the suit properties. The only question to be considered is that whether the plaintiff is in possession of the suit properties on the date of the suit. The trial Court as well as the First Appellate Court failed to appreciate the evidence in Exs.A.1 to A.14 filed by the plaintiff and erred in appreciating the oral evidence of PW.1 to PW.4 to prove that, plaintiff's possession over the suit properties. The trial Court as well as the First Appellate Court failed to appreciate and over looked the fact that the suit properties are ancestral joint



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family properties of the three sons of Muthan, namely Sengan, Thoongani and Veeran. Thoongani died issueless. The suit properties devolved in Lakshmanan s/o Sengam and the said Lakshmanan also died issueless in Ceylon. The Court erred in investigating the title to the suit properties instead of finding out the possession of the same. The oral evidence of DW.1 to DW.8 ought to have been rejected as they are strangers to the suit properties and the documents filed by them do not show any title and possession of the suit properties and reiterated other grounds raised in the grounds of appeal and thus, pleaded to allow the Second Appeal.

12.The learned counsel for the appellant further contended that, the First Appellate Court failed to frame proper issues and framed only one issue, i.e., whether the Appeal is maintainable or not, which is against the provisions of Order 41 Rule 31 of CPC. It is mandatory to frame necessary issues and the Appellate Court should formulate points for determination and state reasons for decision. The First Appellate Court failed in this regard. Therefore, on this ground also, the judgment and decree has to be set aside. To support his arguments, he relied on the judgment of this Court in the case of ***K.M.M.Kadar Hussain Vs. O.M.R.Selvaraj*** reported in [1997 (I) CTC 559].



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plaintiff and his relatives, who are in Ceylon. The entire properties are in possession and enjoyment of the plaintiff. However, to support this averment, the plaintiff failed to file any document and evidence to show that the suit properties are his ancestral joint family properties.

16. On perusal of the evidence, it is seen that the plaintiff relied upon the document in Ex.A1 dated 19.10.1993, Patta issued by the revenue department. The suit is filed in the year 1990. The patta has been obtained subsequent to the filing of the suit, pertaining to Survey No.188/2 and 188/4, not covering the above entire suit properties. Further, the plaintiff filed Exs.A.2, A.3 and A.4 pertaining to Survey No.185/5, which is standing in the name of his father. There is no detail about the date of issuance of patta. It is also seen that, it is a joint patta issued in the names of Lakshman s/o Sengam, Mukkaye, w/o Perumal, Thoongani, s/o Veeramuthan and Veeran. Exs.A.3 and A.4 are notices and not patta. The revenue receipt Exs.A.5 and A.6 to A.8 does not reflect plaintiff's possession. The relationship of the parties are admitted. There is no dispute in this regard. Further, it is to be noted that the defendants filed a suit against one Paneerselvam and plaintiff/Ramasamy. The plaintiff/Ramasamy filed a suit in O.S.No.95 of 1997 before the Attur District



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Munsif Court, with regard to plaint suit properties for injunction. It was decreed in favour of the defendants. The judgment and decree is filed as Ex.B.18. On perusal of that, it is noted that the plaint suit properties are the subject matter of the suit in O.S.No.708 of 1988 and in which, it was asserted that the plaint schedule properties are in enjoyment and possession of the 1st defendant. The suit has been filed against the present plaintiff and one Paneerselvam. Ex.B.17 and B.18 reveals the fact that Lakshmanan s/o. Sengam gave the properties to the 1st defendant for maintenance. In such circumstance, the plaintiff failed to prove how the suit properties came to his possession after the judgment in Ex.B.17 and B.18.

17.Further, on perusal of records, it is seen that the revenue receipts in Ex.A.12 and A.13 are not enough to hold that the plaintiff is having right over the plaint schedule properties. The plaintiff failed to file revenue documents like Adangal, Patta, Chitta etc., to show his possession over the plaint schedule properties. Further, on perusal of the letter dated 18.01.1962 in Ex.B.6, which was hand written by Lakshmanan to the 1st defendant, reflects the fact that while Lakshmanan left India and went to Ceylon, he entrusted the properties to the 1st defendant for maintenance. The letter in Exs.B.1 to B.9 also exposes the fact the Lakshmanan entrusted the properties to the 1st defendant for



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maintenance. Exs.B.10, the Power Deed dated 18.11.1988 executed by Lakshmanan in favour of the 4th defendant, the husband of PW3. Ex.B.11 pertains to Survey No.59/6 of suit properties. The patta stands in the name of Lakshmanan. The revenue kist patta is filed in Ex.B.12 and B.13. Further, on perusal of defendants' side documents, Exs.B.14, B.15 and B.16, it reveals the fact that patta stands in the name of Lakshmanan. Therefore, the trial Court came to the conclusion that the plaintiff failed to prove his contention that the suit property is a ancestral joint family property and he is in possession of the same.

18.The proposition stated in the decision relied on by the learned counsel for the appellant is that, it is incumbent upon the Appellate Court to raise the points for determination and to state reasons for the decision. The First Appellate Court discussed the entire evidence and framed separate issues and the same is not a ground in this case to set aside the findings of the First Appellate Court, which confirmed the judgment and decree of the trial Court. The citation relied by the learned counsel for the appellant is not helpful to support his arguments.

19.The plaintiff failed to prove his possession over the plaint schedule



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property. When title is questioned, the Court has right to investigate the title.

Therefore, the First Appellate Court confirmed the judgment and decree of the trial Court and the findings of the learned Judge is based upon the evidence. There is no misappreciation of evidence, irrelevant consideration and no ground to hold that the findings are perverse. There are no merits in the appeal. The substantial questions of law formulated in the second appeal are accordingly answered.

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

.07.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Subordinate Judge, Athur

2. The District Munsif, Athur



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.1341 of 2010

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