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S.A.No.794 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.06.2024

PRONOUNCED ON : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.794 of 2011

1. Balasubramaniyan (died)

2. Parvathi

3. Thirumeni

4. Thirugnanam

...

Appellants

(Appellants 2 to 4 brought on record as
LRs of the deceased sole appellant, viz.,
Balasubramaniyan vide Court orders,
dated 25.08.2021 made in CMP.No.3410/2019)

Vs.

1. Veera Padayachi

2. Kasi Rajan

3. Chandra Padayachi

4. Krishnamurthy

...

Respondents



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Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the Principal District Court, Villupuram dated 31.03.2011 passed in A.S.No.125 of 2010 partly reversing the judgement and decree of the II Additional District Munsif, Ulundurpet dated 27.03.2010 in O.S.No.277 of 2007.

For Appellants : Mr. P. Rajarajan

For Respondents : Mr. R. Meenal

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.03.2011 passed in A.S.No.125 of 2010 on the file of Principal District Court, Villupuram, reversing the Judgment and Decree dated 27.03.2010 passed in O.S.No.277 of 2007 on the file of II Additional District Munsif Court, Ulundurpet.

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 legal heirs of the sole deceased plaintiff in the suit in O.S.No.277 of 2007 on the file of Principal District Munsiff Court, Ulundurpet, are the appellants in this second appeal.

4. The fact of the case is that the plaintiff has purchased the suit schedule properties from one Mahalingam for a sale consideration of Rs. 1100/- by a registered sale deed dated 23.6.1978. After purchase, he got mutation of patta bearing No.211 in his name and also got Chitta and Adangal in his name and he is in enjoyment of the same for more than 29 years and thus he has got prescribed title by adverse possession also. The defendants are having their property near the suit schedule properties. Taking advantage of the same, they had attempted to disturb the plaintiff's peaceful possession on 27.8.2007 and the same was prevented by the plaintiff. As the defendants are influenced persons, they may interfere with the peaceful possession of the plaintiff at any time. Hence, the suit.

5. The defendants filed written statement and contested the suit. In the written statement, they denied the allegations raised in the plaint. The suit property never belonged to Mahalingam. In fact, the suit property is originally belonged to the Government and classified as Odai Poramboke. The first



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defendant has got his own property to the eastern side of the 2nd item of the suit schedule property. The plaintiff 2nd item of the suit schedule property was found to be ridge pit for about 40 years and the first defendant levelled the land by spending around Rs.5000 /- and cultivated by joining the 2nd item of the property along with the his property. In the year 1983 the Government has also issued patta No.732 in his name in respect of the 2nd item of the suit schedule property. Subsequently, the 1st defendant has been paying kist and also planted coconut trees and enjoying the same for about 25 years. Therefore the first defendant is having prescribed title by adverse possession also. The 1st item of the suit property, which is situated in the western side of the 2nd item of schedule property is being used by the public as a common pathway. Therefore the plaintiff or his predecessor in title never enjoyed the suit schedule property at any point of time. When the first defendant obtained chitta on 11.07.2008, he came to know that the patta stood in the name of the first defendant was changed without notice to the defendants and thus, it is not legally sustainable. As on date, the 2nd item of the suit schedule property is in the possession and enjoyment of the first defendant. The sale deed got by the plaintiff is a void one and as the 2nd item of the property belonged to Government, the said sale deed is not legally sustainable. As the 1st item of the property is a common lane and 2nd item of the suit property is in possession and enjoyment of the first



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defendant for a long period, the plaintiff is not entitled for any decree as prayed for and the suit has to be dismissed with costs.

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. Whether the plaintiff is entitled for declaration and consequential permanent injunction in respect of the schedule property?
2. Whether the judgment and decree of the trial court is legally sustainable or not ?
3. To what other reliefs ?

7. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined himself as P.W.1 and one Sharankabani was examined as P.W.2 and 5 documents have been marked as Ex.A1 to Ex.A5 . On the side of defendants, the first defendant examined himself as DW1, one Kesavan was examined as DW2 and one Thirumavalavan(VAO) was examined as DW3 and 4 documents have been marked as Ex.B1 to B4. Ex.X1 to Ex.X5 were also marked.



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8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for by a judgment and decree dated 27.03.2010. Aggrieved over the same, the defendants had preferred an appeal in A.S.No.125 of 2010 before the Principal District Court, Villupuram. The First Appellate Court, after considering the entire materials, vide judgment and decree dated 31.03.2011, partly allowed the appeal and set aside the declaration and consequential permanent injunction granted in favour of the plaintiff in respect of 2nd item of the suit schedule property and confirmed the declaration and injunction granted in respect of 1st item of the suit schedule property. Now, challenging the same, the present Second Appeal has been filed by the plaintiff.

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

1. Whether the decree and judgment of the 1st Appellate Court is legally valid in law dismissing the suit for declaration and injunction in respect of II item of suit property basing on the wrong mutation of revenue records done under UDR Scheme sub-dividing the survey No.87/1 into 87/1A and 87/1B when conforms the grant of decree in respect of 87/1A basing on the Exs.A1 to A5 and Exs.X1 to X5?



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2. Whether the decree and judgment of the 1st Appellate Court below are correct in law to decide the title of the II item of the suit schedule property on the basis of only Revenue records rejecting the Registered Sale Deed dated 23.06.1978 under Ex.A1, Patta No.211 under Ex.A.2 and kist receipts of the year 1988, 2005 and 2006 under Exs.A3 to A5 ?

10. The learned counsel for the appellant submitted that the First Appellate Court failed to consider the fact that the appellant/plaintiff has purchased the plaint schedule properties as per the sale deed Ex.A.1 dated 23.06.1978. The First Appellate Court for declaring the 1st item of the suit schedule property, relied upon Ex.A1 sale deed, but not relied the same sale deed with regard to the 2nd item of the suit schedule property and thus, it is a perverse finding. The 1st and 2nd item of the suit schedule properties are registered under the same Sale deed 23.06.1978. The first Appellate Court misconstrued that both are different properties. The old survey number of the plaint schedule property is 87/1. Subsequently, it is sub-divided as 87/1-A and 87/1-B and the First Appellate Court failed to consider these facts. Further, the First Appellate Court failed to consider the documents produced by the appellants, which was marked as Ex.A1 to Ex.A5 and reiterated the other



grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

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11. The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and contended that the appellant/plaintiff failed to produce any title deed of his vendor with regard to the 2nd item of the plaint schedule properties. With regard to the 1st time of the plaint schedule properties, the defendants had no objection to declare his title. With regard to the 2nd item of the property, it is a Government Odai Poorambokku and enjoyed by the respondents/defendants for more than 25 years. To prove his enjoyment, he filed revenue documents, Ex.X.4, Chitta Ex.B.3, Further it is admitted by the appellant/plaintiff during the cross examination that without notice to the defendants on giving a petition to Tashildhar, he got patta for 2nd item of the property. Since the plaintiff had purchased the property from one Mahalingam, who had no title over the plaint 2nd schedule property, the appellant/plaintiff is not getting valid title over the plaint item no.2 of the property. The patta was changed to the name of the plaintiff only in the year 2004-2005 as per Ex.X5. Before that, the first defendant is in enjoyment of the 2nd item of the suit property and still he is in enjoyment of the property, which is evidenced by DW3, Thirumavalan, VAO before the Trial Court. Under these circumstances, the First Appellate Court partly allowed the appeal and



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rightly dismissed the suit for declaration and consequently permanent injunction in respect of 2nd item of the plaint schedule property. There is no ground for interference. No substantial question of law involved in this case and thus, pleaded to dismiss the second appeal.

12. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

13. On perusal of records, it is seen that the plaintiff had filed the suit for declaration of title over the plaint schedule properties. It is noticed that in the plaint, the plaintiff has mentioned the following two survey numbers in schedule of properties:-

1. அ.பு.ரி. சர்வே எண்.87/1ஏ 0.39.0 ஏர்ஸ் தீர்வை 1.32 பைசா
2. அ.பு.ரி. சர்வே எண்.87/1பி 0.08.0 ஏர்ஸ் தீர்வை 0.27 பைசா

14. The contention of the plaintiff is that he had purchased the suit properties from one Mahalingam on 23.06.1978 as per the sale deed Ex.A1. Admittedly, the plaintiff had not filed any documents to show that his vendor



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Mahalingam had title over the plaint schedule properties and during the cross examination, he had admitted the same. His evidence runs as follows:-

“ மகாலிங்கம் பெயரில் சொத்து இருந்து அவர் அனுபவித்ததற்கான ஆதரவினை நான் தாக்கல் செய்யவில்லை.... மகாலிங்கம் சொத்தை கிரயம் செய்தபோது எவ்விதமான மூலப் பத்திரமும், அவர் அனுபவித்ததற்கான ஆதரவையோ தரவில்லை. அது போன்ற ஆவணங்களை நான் பார்த்தது இல்லை. ”

15. Further on reading the cross examination of PW1, it is also noticed that the plaintiff had admitted that his sale deed is not a valid one . His evidence runs as follows:-

" வழக்கு 2வது அயிட்டி சொத்திற்கு கிழக்கு மற்றும் தெற்கு புறத்திலும் பிரதிவாதிகளுக்கு பாத்தியமான கிரய நிலங்கள் உண்டு என்றால் சரியல்ல, கிழக்கு புறம் மட்டும் தான் பிரதிவாதியின் நிலம் உள்ளது. வட்டாட்சியர் அலுவலகத்தில் பட்டா மாற்றம் சம்மந்தமாக பிரதிவாதிகளை விசாரித்தார்களா என்பது தெரியாது. நான் மனு கொடுத்த பிறகு அளந்து பட்டா கொடுத்தார்கள். வேறு ஆவணங்கள் எதையும் அவர்கள் கேட்கவும் இல்லை. நானும் தரவில்லை. உரிமையிலலாத மகாலிங்கத்திடமிருந்து நான் பெற்ற கிரயமும் செல்லத்தக்கதல்ல என்றால் சரிதான். "



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16. Therefore, it is evidenced that the plaintiff's claim is not supported by any documents to prove his title over the plaint schedule properties. Specifically, there is no document to show that his vendor Mahalingam had title over the plaint schedule properties. In the absence of any evidence to show that the vendor Mahalingam had title over the plaint schedule properties, the plaintiff cannot get a declaration over the same. The defendants in their written statement disputed the plaintiff's claim over the 2nd item of the suit schedule property alone, but, not disputed the 1st item of the suit schedule property. The first defendant during the cross examination (DW1) deposed that he did not dispute the right of the plaintiff's in respect of the 1st item of the suit schedule property, which runs as follows :

" வாதி ஆனவர் என் பெயரில் 2 அயிட்ட சொத்து பொறுத்து வழக்கு செய்துள்ளார் என்றால் சரிதான். நான் முதல் அயிட்ட சொத்தை பொறுத்து எனக்கு எவ்வித உரிமையும் இல்லை என்று சொன்னால் சரிதான்.

Therefore, the plaintiff's title with regard to the 2nd item of the suit property alone is disputed by the defendants. Further more, the defendants' enjoyment over the 2nd item of the suit schedule property is evidenced by the documents Ex.B.1 to Ex.B.4 and Ex.X.4.



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17. On perusal of the evidence on records, it is noticed that originally the properties situated in S.F.No.87/1 consists of one acre and 16 cents. Subsequently, it was subdivided into 87/1-A and 87/1-B. S.No.87/1-B stands in the name of the first defendant. It is evidenced by Ex.X.4 Chitta. Further, it is evidenced that the plaintiff got patta over the second item of the property only in the year 2004-2005 as per Ex.X.5. Before that, there is no document in the name of the plaintiff, which falsifies his case that he enjoyed the property from the date of purchase, i.e., from the year 1978 . In the absence of any document to show that the plaintiff is in possession of the plaint 2nd item of schedule property before 2004, his claim fails. In view of the above, the plaintiff failed to prove his title over the plaint 2nd item of the suit schedule property as sited above. Therefore, the finding of the First Appellate Court is based on the evidence on record and no irregularities or perversity in it. There is no misconception of evidence on record. There is no ground to interfere with the findings of the First Appellate Court.

18. In the light of the abovesaid factors, it is found that the First Appellate Court have on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties



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and the principles of law governing the same, had correctly decided the issues and the findings of the First Appellate Court is legally valid and I find no merit in this Appeal and the substantial questions of law formulated in the second appeal is, accordingly, answered against the plaintiff/appellant.

19. 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
mrp

22.07.2024

To

- 1.The Principal District Court,
Villupuram
- 2.The II Additional District Munsif,
Ulundurpet.



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V.SIVAGNANAM, J.

mrp

Pre-Delivery Judgment made
in S.A.No.794 of 2011

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