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S.A.No.611 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2024

PRONOUNCED ON : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.611 of 2012

1.Lakshmi Ammal
2.Ravinathan
3.Ramachandran

...

Appellants

Vs.

Sengeani

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 20.09.2011 made in A.S.No.46 of 2007 on the file of the Additional Sub Court, Tindivanam confirming the Judgment and decree dated 28.06.2007 made in O.S.No.97 of 2000 on the file of District Munsif cum Magistrate Court, Vanur.

For Appellants	: Mr.P.Dinesh Kumar
For Respondent	: Mr.N.Suresh

JUDGMENT



S.A.No.611 of 2012

Challenge in this second appeal is made to the Judgement and Decree dated 20.09.2011 made in A.S.No.46 of 2007 on the file of the Additional Sub Court, Tindivanam confirming the Judgment and decree dated 28.06.2007 made in O.S.No.97 of 2000 on the file of District Munsif cum Magistrate Court, Vanur.

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

3. The case of the plaintiff, in brief, is that the plaintiff filed the suit for declaration and permanent injunction, restraining the defendants, their men, agents from obstructing, disturbing and entering into the suit schedule properties. Plaintiff property was originally owned by the one Pachaiyammal. The said Pachaiyammal sold the property vide Sale Deed dated 09.03.1952, Ex.A.1 to one Dhanabakkyam. From the time of the said purchase, Dhanabakkyam took possession of the suit schedule property and enjoyed it, without any objection from anyone. After the death of Dhanabakkyam and her husband, their son Govindarajan enjoyed the property and sold the same to the plaintiff through Sale Deed dated 07.06.1990. In pursuance of the Sale Deed dated 09.03.1952, the plaintiff and plaintiff's vendors have been enjoying the



S.A.No.611 of 2012

property continuously for more than 12 years. The suit schedule property is in possession of the plaintiff. Since the defendants are adjacent land owners, they are obstructing and disturbing the plaintiff's possession over the property.

4.The defendants contested the suit, denied the allegations in the plaint and filed a written statement contending that the property was originally owned by one Mannapan and his brother Varadhappan. They enjoyed the property without partition. Mannapan had two children namely Chinnapan and Pachaiyammal. Varadhappan had three children namely Kuppagounder, Narayanasamy gounder and Thirumalai gounder. They have enjoyed 22 1/2 cent commonly and without any partition. Kuppagounder had two sons Subrayan and Kannapan. Kannapan died without any partition. The defendants are the legal heirs of the said Kannapan and they are in possession and enjoyment of the suit property. Thus, pleaded to dismiss the suit.

5.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.தாவா சொத்தை வாதி 7.6.90ல் பெற்ற கிரையம் சட்டப்படியாக செல்லக்கூடியதா?
- 2.தாவா சொத்து பிரதிவாதிகளுக்கு வாரிசு முறையில் உரிமையானதா?



S.A.No.611 of 2012

3. வழக்கு வியாஜ்ஜிய மீலம் இல்லாத வகையில்
பாதிக்கப்பட்டுள்ளதா?

4.வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன?”

6. Before the Trial Court, in support of the plaintiff's case, PW 1 and PW3 were examined and 9 documents were marked as Ex.A.1 to Ex.A.9. On the side of the defendants, DW1 to DW4 were examined and 6 documents were marked as Ex.B.1 and Ex.B-6.

7. Upon considering the evidence and documents, the trial Court allowed the suit and granted the prayer declaration and permanent injunction as claimed by the plaintiff.

8. Aggrieved over the same, the defendants had filed A.S.No.46 of 2007, before the Additional Sub Court, Tindivanam. 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 defendants have filed the present second appeal.

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



S.A.No.611 of 2012

“a) Whether both the Courts below failed to consider the fact that through Ex.A2 Sale Deed, what was conveyed was the joint family property to an extent of 1/3rd share of Govinda Gounder and hence, the plaintiff at the best will only be entitled for declaration to declare her title for the 1/3rd share in the suit property and for a preliminary decree of partition for 1/3rd share in the suit property?

(b) Whether the findings of both the Courts below can be termed as perverse due to improper appreciation of oral and documentary evidence available on record?

10.The learned counsel appearing for the appellants contended that the trial Court and the First Appellate Court failed to consider the fact that there was no partition between the family members of the appellants and the respondent vendor is not entitled to sell the property. The First Appellate Court failed to decide the issues independently and overlooked the fact that the joint patta has been issued in the name of the plaintiff and defendant and decreed the suit. It is erroneous and irrelevant consideration of material on the record. Without considering the evidence on record and reiterated the other grounds



S.A.No.611 of 2012

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

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11.The learned counsel appearing for the respondents supported the judgment of the trial Court and the First Appellate Court and contended that the property was originally owned by one Pachayammal. She sold the property vide Sale Deed dated 09.03.1952 to Dhanabakkyam. After the death of Dhanabakkyam and her husband, her son Govindarajan enjoyed the property and sold the same to the plaintiff on 07.06.1990 in pursuance of the Sale Deed. Therefore, the plaintiff is having title over the property and in enjoyment of the property. The defendants have no right over the property. There is no ground to interfere with the findings of the trial Court and the First Appellate Court. There is no irregularity and no substantial question of law is involved in this case and thus, pleaded to dismiss the Appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On persual of the evidence, it is seen that the respondent/plaintiff filed the suit against the defendants for the following prayer,



S.A.No.611 of 2012

“தாவா சொத்தில் வாதியின் உரிமையினை விளம்புகை செய்யும் படிக்கும், தாவா சொத்தை வாதி அனுபவிப்பதை பிரதிவாதிகளாவது அவருடைய ஆட்களாவது, முகவர்களாவது தடையும் இடைஞ்சலம் செய்யாமல் இருக்கும் படிக்கும் தாவாசொத்தில் பிரவேசிக்காமல் இருக்கும் படிக்கும் பிரதிவாதிகள் பேரில் நிரந்தர உறுத்துக்கட்டளை பிறப்பிக்கும் படிக்கும் செலவத்தெகைக்கும் வழக்கு ”

14.The averment in the plaint is that, the property was originally owned by one Pachaiyammal. She sold the property through Sale Deed in favour of one Dhanabakyam by way of registered Sale Deed on 09.03.1952. It is evidenced by Ex.A.1. Thereafter, the said Dhanabakyam enjoyed the property. After her death, her husband and their son Govindarajan enjoyed the property and sold it to the plaintiff by way of a Sale Deed dated 07.06.1990. It is evidenced by Ex.A.2. To controvert this evidence, no evidence is adduced by the defendants to dispute the title of the plaintiff over the plaint suit properties.

15.The defendants filed written statement and contended that the property was originally owned by one Mannapan and his brother Varadhappan. They enjoyed the property without partition. Mannapan had two children namely Chinnapan and Pachaiyammal. Varadhappan had three children namely Kuppa Gounder, Narayanasamy Gounder and Thirumalai Gounder. They have enjoyed 22 1/2 cent commonly and without any partition. Kuppagounder had



S.A.No.611 of 2012

two sons Subrayan and Kannapan. Kannapan died without any partition. The defendants are the legal heirs of the said Kannapan and they are in possession and enjoyment of the suit property. To these contentions, there is no supporting materials in favour of the defendants. The defendants failed to substantiate their contention that the property was enjoyed commonly.

16.The learned counsel for the defendants relied upon the joint patta issued in the name of Lakshmi, Sengani and Sarangapaani, Ex.B.6 dated 28.04.1996. Apart from this, there is no other evidence to show that the defendants have any right over the property. In the description of property, it is mentioned as 1/3rd portion, 142 (¾) cents. This description may not be correct. On perusal of the Sale Deed dated 07.06.1990, Ex.A.2 registered in favour of the plaintiff, reflects that there is a clear extent mentioned in the Sale Deed,

“கிராம நத்தம் சர்வே 122/1 5.92ல் பாண்டி ரோட்டுக்கு (தெ) காலணி ரோட்டுக்கு (வ) குப்பகவுண்டர் மனைக்கு (மே) காத்தவராய கவுண்டர் வகையரா மனைக்கு (கி) அதன் மத்தியில் தெவஜா அடி 97 கிமேஜா அடி 6 3/4 இதன் ச.அடி 654 3/4 இது ரீ சர்வே 46/1 சம்மந்தம். மேற்படி கிராம நத்தம் 122/1 5.92ல் பாண்டி ரோட்டுக்கு (தெ) மேலே கண்ட கிரைய மன்னுக்கு (வ) (மே) கண்ணப்ப கவுண்டர் வகையரா மனைக்கு (கி) இதன் மத்தியில் தெவஜா அடி 14 கிமேஜா அடி 11 1/2 இதன் ச.அடி 161.

இதன் ரீ சர்வே 46/1 சம்மந்தப்பட்டது. கிராம நத்தம் சர்வே 122/1 5.92ல் கோவிந்த கவுண்டர் வகையரா மனைக்கு (கி) (வ) கண்ணப்ப கவுண்டர் வகையரா மனைக்கு (மே) பாண்டி ரோட்டுக்கு (தெ) இதன் மத்தியில் தெவஜா



S.A.No.611 of 2012

அடி 32 1/2 கிமேஜா அடி 16 1/4 இதன் ச.அடி 528 1/4 இது சர்வே 46/1 சம்மந்தப்பட்டது.

கிராம நத்தம் சர்வே 122/1 5.92ல் திருமலை கவுண்டர் வகையரா மனைக்கு (மே) பாண்டிரோடுக்கு (தெ) கண்ணப்ப கவுண்டர் வகையரா மனைக்கு (கி) புன்னை பட்டாமனைக்கு (வ) இதன் மத்தியில் தெவஜா அடி 97 கிமேஜா அடி 7 இதன் ச.அடி 679.

இது ரீ சர்வே 46/1 சம்மந்தப்பட்டது. கிராம நத்தம் சர்வ122/1 5.92ம் பாண்டிரோடுக்கு (தெ) காலணி பாதைக்கு (கி) காத்தவராய கவுண்டர் பாகத்துக்கு (வ) கோவிந்த கவுண்டர் மனைக்கு (மே) இதில் தெவஜா அடி 32 1/2 கிமேஜா அடி 16 1/4 இதன் ச.அடி 528 1/4 இதில் 1/3 பாகம் ச.அடி 142 3/4.”

17.In this, there is no mentioning about the 1/3rd portion alone. Therefore, the argument projected by the appellants' counsel that there is no partition between the parties is not an acceptable one. Further, there is no evidence to show that the defendants are having share over the plaint schedule property, except the document relied on by the learned counsel for the appellants in Ex.B.6. Ex.B.6 is not enough to hold that the plaintiff purchased undivided share from his vendor. On evidence, the plaintiff established his title and possession over the plaint schedule properties. Therefore, the trial Court and the First Appellate Court declared his title and granted injunction.



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S.A.No.611 of 2012

V.SIVAGNANAM, J.

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S.A.No.611 of 2012

Pre-Delivery Judgment made
in S.A.No.611 of 2012

19.07.2024