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S.A.No.1015 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1015 of 2013

1.Palaniappan
2.Vijayalakshmi

... Appellants/Appellants/Defendants 1 & 2

Vs.

1.T.Periasamy
2.Durairasu

... 1st Respondent/1st respondent/Plaintiff
...2nd Respondent/2nd respondent/3rd defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 24.06.2013 in A.S.No.69 of 2010 on the file of the Sub- Court, Namakkal, confirming the Judgment and Decree dated 18.09.2010 in O.S.No.531 of 2007 on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Ms.Dakshayani Reddy, Senior Counsel
for Mr.P.Rajavel

For Respondents : Mr.Bala Ganesh
for Mr.T.M.Hariharan



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JUDGMENT

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The present Second Appeal arises against the Judgment and Decree of the Court of Sub Judge, Namakkal, in A.S.No.69 of 2010 dated 24.06.2013 in confirming the Judgment and Decree of the learned Principal District Munsif, Namakkal in O.S.No.531 of 2007 dated 18.09.2010.

2.The defendants 1 and 2 are the appellants in the Second Appeal. O.S.No.531 of 2007 was presented by one Periyasamy. According to him, his mother had purchased the property for a sum of Rs.25/- on 04.04.1949. This purchase was under **Ex.A-1**. His mother-Muthammal executed a Will under **Ex.A-2** dated 10.07.1985. As per the Will, the property was bequeathed to the plaintiff. Since, he feared interference at the hands of the defendants, he presented the suit, seeking for the relief of permanent injunction restraining the defendants from interfering with his right, title and interest over the property.

3.The case of the defendants is that the plaintiff was at no point of time in possession and occupation of the suit schedule property and the documents produced by the plaintiff are in result of forgery and fabrication.



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They would state that the previous suit in O.S.No.50 of 1989 on the file of the Additional District Munsif, Namakkal which ended in a decree granted by this Court under Ex.A-5 in Second Appeal No.1497 of 1994 dated 17.03.1996, relates to some other property and not the suit schedule mentioned property.

4.During the course of trial, the plaintiff examined himself as P.W.1 and two other witnesses, including the Zonal Deputy Tahsildar, Namakkal as **P.W.3**. He marked **Exs.A-1 to 9**. The defendants unfortunately did not enter the witness box nor did they file any documents other than Ex.B-1, during the cross examination of the plaintiff.

5.The Trial Court, after conducting detailed examination of the records placed before it and taking into consideration the fact, the defendants did not let in any evidence at all, decreed the suit as prayed for.

6.Aggrieved by the same, a First Appeal which had been preferred before the learned Sub Judge, Namakkal also ended in a defeat for the



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appellants.

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7. Against the concurrent findings of facts, the present Second Appeal has been presented. This Court by an order dated 11.11.2013 was pleased to order notice regarding admission.

8. Heard, Ms. Dakshayani Reddy, learned Senior Counsel for Mr. P. Rajavel, appearing on behalf of the appellants and Mr. Bala Ganesh, learned counsel for the respondents.

9. I have gone through the records, which have been placed before this Court.

10. Ms. Dakshayani Reddy, would vehemently contend that the property purchased by the mother of the plaintiff, which is the subject matter of the previous litigation, is dated 19.01.1945, whereas the present suit property relates to the document alleged to have been purchased on 04.04.1949. Therefore, according to her, the suit property which has been subject matter of the present suit is totally unconnected with the property that is subject



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matter of the suit in O.S.No.113 of 1988 or for that matter in S.A.No.1487 of 1994. She would then contend that the plaintiff has not filed any other documents in order to substantiate his case and therefore, she would plead that the Second Appeal be admitted and the Judgments and Decrees of the Court below be set aside and the suit be dismissed.

11.Mr.Bala Ganesh, would bring my attention to the document under Ex.A-1, the Schedule of property under Ex.A-1 which reads as follows:-

“சொத்துவிவரம்

சேலம் ரிபு நாமக்கல் சபரிடி வலையப்பட்டி கிராமத்தில் எங்கள் முன்னோர்களால் அனுபவித்து அதன்பிறகு எங்கள் தகப்பனார் அனுபவித்து அதன்பிறகு நாங்கள் அனுபவித்து வந்த சர்வே நெம்பர் 370 கிராமநத்தத்தில் தென்வடல் அடி 220 10 லிங்ஸ் மேல்புரம் பாதைக்கும் மேற்கு திருச்சிவேட்டிலிருந்து மேற்கு முகமாக பிரிந்து தெற்கு முகமாக வரும் பாதைக்கும் தெற்கும் கிழக்கும் அய்யங்கார் காலி நிலத்துக்கும் மேற்கு கிழமேல்வீதி நத்தம் காலி நிலத்துக்கும் வடக்கு மேல்புரம் தென்வடல் அடி 220 கீழ்புரம் 330 அடி வடபுரம் கிழமேல் அகலம் 106 அடி தென்புரம் 102 அடி இதிலிருக்கும் தென்வடல் 21 அடி அகலம் 52 அடி நீளம் உள்ள கூரை வீடும் 22 அடி அகலம் 46 அடி நீளம் உள்ள கூரை வீடும் இதில் உள்ள கதவுநிலைகள் இரண்டும் சுக்காமண்ணால் கட்டப்பட்டது. 50 அடி நீளம் 1524 அகலமுள்ள மாட்டுகொட்டகையும் இதிலுள்ள எங்கள் தகப்பனாரால் வெட்டப்பட்ட உரைகிணறும் எலுமிச்சைமரம் 2ம்



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மாதுளை மரம் 3ம் ஆகிய இவைகள் தான் கிரயசம்மந்தப்பட்டவை.”

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12.This document, though an unregistered document, it has the stamp value of Rs.15/-. Any Transfer of immovable property of value more than Rs.100/-, has to be done by way of registration. This is as per the relevant provisions of the Transfer of Property Act, the Registration Act read with the Stamp Act. However, in the present case, the value of sale is only Rs.25/- and therefore, it does not come under the teeth of any of the aforesaid Acts.

13.The comparison of the Schedule of property under *Ex.A-1* and the suit schedule property shows that they are one and the same property. Therefore, the plaintiff claims the property by way of a purchase and as pointed out above, the defendants have not taken any steps for the purpose of rebutting this evidence.

14.Ms.Dakshayani Reddy, learned Senior Counsel would argue that the Will that has been executed by Muthammal cannot be relied upon. This argument also does not appeal to me for the simple reason that the appellants are not related to Muthammal and therefore they do not have any caveatable interest to oppose the Will.



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15.Had the defendants been serious enough about the litigation, they would have thrown atleast some shred of paper into the Court, or would have ventured to enter into the witness box in order to defeat the case of the plaintiff. Neither having been done, it is not for this Court to reappreciate the evidence sitting in Second Appeal.

16.The Courts below have found that the plaintiff is in possession of the property by virtue of **Ex.A-1** – Sale deed. As long as the sale deed is in force, possession would have to follow title and consequently the suit for bare injunction had rightly been decreed. Accordingly, the appeal does not deserve admission and it is dismissed.

17.In fine, the Judgment and Decree of the learned Subordinate Judge, Namakkal, in A.S.No.69 of 2010 dated 24.06.2013 in confirming the Judgment and Decree of the learned Principal District Munsif, Namakkal in O.S.No.531 of 2007 dated 18.09.2010 is confirmed.



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18.At this stage, Ms.Dakshayani Reddy, learned Senior Counsel pleads that it should be left open to the parties to file a regular suit for declaration of the title and recovery of possession. It is always open to the defendants to present a suit for such a relief, if the same is open to them as per law.

19.With the above observation, the Second Appeal is dismissed. Cost throughout.

05.01.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-speaking order

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To:

1.The Sub Judge, Namakkal.

2.The Principal District Munsif,
Namakkal.

3.The Section Officer
V.R.Section
High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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