



Second Appeal No.1371 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1371 of 2013

Munusamy (Late)

1.Azhagammal

2.Neelamegan

3.Anbalagan

4.Vijaya

5.Tamilselvi

.... Appellants

-Vs-

1.Lourdusamy

2.Tamaraiselvi

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 28.02.2013 made in A.S.No.40 of 2011 on the file of the learned II Additional Subordinate Judge, Villupuram reversing the judgment and decree dated 03.02.2011 made in O.S.No.183 of 2007 on the file of the learned Principal District Munsif, Ulundurpet.

For Appellants : Mr.R.Rajarajan

For Respondents : R1 - Refused
R2 - Served, no appearance



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J U D G M E N T

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The present Second Appeal arises out of the judgment and decree dated 28.02.2013 in A.S.No.40 of 2011 on the file of the II Additional Subordinate Judge, Villupuram reversing the judgment and decree dated 03.02.2011 in O.S.No.183 of 2007 on the file of the Principal District Munsif, Ulundurpet.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The plaintiffs are the appellants. The original plaintiff one Munusamy had filed the suit for declaration and for injunction. His case is rather simple and straight forward. According to him, the property originally belonged to one Kesavan. Kesavan sold the property to the plaintiff's mother Marimuthu Ammal by way of a registered sale deed dated 24.01.1963. During the UDR proceedings, patta was granted in favour of the then sole defendant Tamaraiselvi. Since he feared interference with his possession, he came forward with the suit.

3. On service of summons, Tamaraiselvi filed a written statement pleading that she has been granted patta in her favour as it was a Government land and therefore, she is the owner of the property. Pending the suit, one Lourdusamy



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was impleaded as the defendant, who claimed that the property is a Government land, for which he is paying 'B' memo and therefore the suit for declaration and injunction is not maintainable. He would state that the land is a Tharisu (தரிசு) land, over which he has a right of access to the ingress and egress to his property. Therefore, he resisted the claim of the plaintiff.

4. On the basis of these pleadings, the trial Court framed the following issues:

- (1) வழக்கு சொத்திற்கு வாதிகள் உண்மையான உரிமையாளர்களா?
- (2) வாதிகள் தாவாவில் கோரியவாறு விளம்புகை மற்றும் நிரந்தர உறுத்துக்கட்டளை பெற உரிமையுடையவரா ?
- (3) வேறு என்ன பரிகாரம் ?
- (4) வழக்கு சொத்துக்களுக்கு வாதி கிரையம் பெற்ற கிரையதாரர்களுக்கு உண்மையான உரிமையுள்ளதா ?
- (5) வழக்கு சொத்து அரசுக்கு உரிமையானதா ?

5. On the side of the plaintiff, four witnesses were examined and seven documents were marked. The first defendant Tamaraiselvi, though filed a written statement, had remained *exparte*. It was the second defendant who contested the suit. On his side, he examined two witnesses and marked three documents.



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6. On the basis of the pleadings and evidence, the learned trial Judge decreed the suit as prayed for. Aggrieved by the same, regular appeal was preferred in A.S.No.40 of 2011 on the file of the II Additional Subordinate Judge, Villupuram, who allowed the appeal. Against the reversing judgment, the present Second Appeal has been brought forth before this Court.

7. This Second Appeal was admitted on 03.01.2014 on the following substantial questions of law:

- (1) Is not the appellate court wrong in reversing the well considered decree and judgment of the trial court by over looking the documentary evidence marked as Ex.A1 and A6 on the side of the plaintiff and the revenue records marked as Court documents under Ex.X1 and X2 ?
- (2) Whether the Appellate Court is correct in drawing the inference that the suit property is Punja Tharisu on the basis of surmises and conjectures and by ignoring the voluminous documentary evidence produced on the side of the plaintiff?
- (3) Whether the Appellate Court is correct in dismissing the suit for non joinder of Government as necessary party when the suit property is the patta land as evidenced from the documentary evidence adduced on the side of the plaintiff?



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8. The respondents, though served, have not entered appearance.

9. As the questions of law are inextricably connected, they are heard together. Heard Mr.Rajarajan for the appellants. He would submit that, from a perusal of Exs.A1, A2 and X1 and X2, should lead the Court to the conclusion that the plaintiff has shown his title to the property. Apart from that he would plead that, pending suit the patta that had been granted in favour of the first defendant had been cancelled and this is clear from Ex.B5. Apart from that, he would state that there is no necessity to implead the Government as held by the learned trial Judge. He would place this submission on the basis of the fact that from Ex.B5 it is clear that what was originally a patta land was converted to Tharisu land during the UDR proceedings and therefore, the Government itself, after enquiry, had come to a conclusion that it is not its land and therefore, the necessity to implead the Government does not arise.

10. I have carefully considered the submissions made by Mr.Rajarajan and gone through the judgments of the Courts below.

11. From Ex.A1 it is clear that on 24.01.1963 one Kesavan had executed the sale deed of the property in his possession in favour of one Marimuthu



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Ammal. This Marimuthu Ammal, according to the plaint, is none else than the mother of Munusamy / plaintiff. I have to see whether the predecessor-in-title of Marimuthu Ammal had right, title and interest in the property. In order to substantiate the same, Ex.X2 has been produced before this Court. Ex.X2 is the 'A' register for the village of Pugaipatti, Thirukoilur Taluk, then South Arcot District. Insofar as S.No.219/6 is concerned, 'A' register would show that it was not treated as Government land. The plaintiff had approached the Court on account of the fact that Tamaraiselvi had put up a claim over the property on the ground of the patta that had been granted by the Government in her favour.

12. After the suit had been presented, one Lourdusamy @ Saminathan had given an appeal to the Revenue Divisional Officer, Thirukoilur seeking for cancellation of the patta that had been granted in favour of the first defendant Tamaraiselvi. By proceedings in Na.Ka.No.A3/2284/2007 dated 11.11.2008 the patta that had been granted in favour of Tamaraiselvi stood cancelled. Therefore, the claim of Tamaraiselvi in and over the property can not stand a moment's scrutiny. She had claimed the property only by virtue of the patta granted by the Tahsildar and that patta having been cancelled, in and by way of the proceedings of the Revenue Divisional Officer on 11.11.2008, she cannot claim a better title over the property than that of the plaintiff who has projected a sale deed.



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13. Now I have to see as to whether the plaintiff has a better title over Lourdusamy. The claim of Lourdusamy is that it is a Government property. From Ex.A6 it is clear that the property had been mortgaged by one Mari and Oomaiyan in favour of one Mohammed Meeran Sahib. The said document was registered on 19.05.1927. In order to substantiate the truth and genuineness of the same, Ex.X1 has been summoned from the file of the Sub Registrar Office, Elavanasurkottai. The Encumbrance Certificate for the said period shows two documents viz., Document No.1295 of 1927 dated 09.06.1927 and Document No.64 of 1963. Document No.1295 of 1927 is the document which has been produced under Ex.A6. Thus, the document under Ex.A1 tallies with Ex.X1 as Document No.64 of 1963.

14. On a joint reading of Exs.A1, A6 and X1, one can come to the conclusion that the property had been enjoyed by Mari and Ommaiyan as early as 1927 and thereafter, on the strength of their ownership, they had mortgaged the property in favour of Mohammed Meeran Sahib. Forty years after his enjoyment, Mari's son Kesavan had alienated the property in favour of Marimuthu Ammal, the mother of the plaintiff.



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15. The factum that the initials differ does not matter because, it is clear from Ex.X1 that it was this property viz., S.No.219/6 had been dealt with in two registered documents. The plaintiff presents a suit as against a person from whom he faces interference. He had feared interference from Tamaraiselvi and therefore presented the suit. The plaintiff did not fear any interference from the Government and therefore the necessity to implead the Government in such a suit is not essential. A person who has better title to the property can always present a plaint against a person from whom he has a threat. In this particular case, on the date of presentation of the plaint viz., in February 2010, the plaintiff feared interference of possession only from Tamaraiselvi and hence he filed the suit.

16. In the light of the above discussion, I am of the view that, as the plaintiff has been able to show that his predecessors-in-title have been in possession over the property from 1927 onwards, he would be entitled to get a decree for possessory title, though not an absolute title over the property.

17. In fine, the questions of law are answered in favour of the appellants and against the respondents. The plaintiff is declared to have possessory title over S.No.219/6, Pogaipatti Village, Tirukoilur Taluk, Villupuram District. The



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judgment and decree of the Court of the II Additional Subordinate Judge at Villupuram dated 28.02.2013 in A.S.No.40 of 2011 is set aside. The suit in O.S.No.183 of 2007 on the file of the Principal District Munsif, Ulundurpet stands decreed insofar as possessory title of the plaintiff is concerned. The Second Appeal is allowed in the above terms. However, there shall be no order as to costs.

11.03.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST

To

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



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V.LAKSHMINARAYANAN, J.

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