



S.A.No.291 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.291 of 2013

1.Palaniammal (Died)

2.Arul

3.Jayachandiran

4.Jayakumar

5.Ramesh

6.Subashini

... Appellants

(A1 died. A2 to A6 already on
record are the legal heirs of the
deceased A1)

Vs.

1.Narayanan @ Settu

2.Arumugam

3.Govindan (Died)

4.Subramani

5.Pavaoomambal

6.Vasantha

7.Balu

8.Arumugam

9.Ramasamy

10.Anjalai

... Respondents

(R4 already on record who is



S.A.No.291 of 2013

the legal heir of the deceased

R3)

WEB COPY

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree in A.S.No.21 of 2009 dated 09.03.2012 on the file of the Principal District Judge, Villupuram, confirming the Judgment and Decree in O.S.No.328 of 1997 dated 28.02.2005 on the file of the Principal District Munsif, Ulundurpet.

For Appellants : Mr.S.Krishnasamy

For Respondents :Mr.T.Gandhi

JUDGMENT

This second appeal arises against the judgment and decree of the court of Principal District Judge, Villupuram in A.S.No.21 of 2009 dated 09.03.2012 in confirming the judgment and decree of the court of learned Principal District Munsif, Ulundurpet in O.S.No.328 of 1997 dated 28.02.2005.

2. For the sake of convenience, the parties will be referred to as



S.A.No.291 of 2013

their ranks in the suit.

WEB COPY

3. The legal heirs of the plaintiff are the appellants. The original plaintiff died pending the appeal and his legal heirs were brought on record as appellants.

4. It is the case of the plaintiff that the property belonged to Chinnapillai Ammal, Ramanuja Kounder and his children Murugan and Parvathy. The plaintiff/Muniya Kounder came to have purchased the property by way a registered sale deed dated 14.02.1983 and became absolute owner of the property. He pleaded that the revenue records have been mutated only in his name and he is in possession and enjoyment of the same. The defendants attempted to trespass on 19.11.1997, which he effectively prevented, but in order to put a quietus to the issue, he presented a suit in O.S.No.328 of 1997.



S.A.No.291 of 2013

WEB COPY

5. The defendants entered appearance and a written statement has been filed by the first defendant, wherein he denied the right of vendor to the plaintiff viz., Chinna Pillai Ammal and others. According to them, the property did not belong to Chinna Pillai Ammal at all and therefore, the sale of property is invalid. It was specifically pleaded that Item Nos. 3, 4 and 5 of the suit properties and 26 cents out 39 cents in Item No. 8 belonged to the father of the first defendant/Narayanan @ Settu. He brought to the notice of the court, there was prior litigation between the parties in O.S.No.625 of 1991, which has been filed for the relief of declaration of title and for recovery of possession. In that suit, the present plaintiff/Muniya Gounder was the fourth defendant. He had not contested the suit and had remained exparte. Subsequently, there was a compromise decree entered into in that suit and based on that compromise decree, the title was declared in favour of the plaintiff in that suit namely Narayanan @ Settu. He further stated that on the strength of O.S.No.625 of 1991, he filed E.P. No.176 of 1995 and took possession of the property. He further alleged that the present plaintiff filed



S.A.No.291 of 2013

an application to recall the decree passed in OS.No.625 of 1991 and the same was dismissed and the civil revision petition preferred there from also ended in dismissal.

WEB COPY

6. The fourth defendant filed a written statement and this was adopted by the fifth defendant. The fourth and fifth defendants are purchased the property from the first defendant and their defence was in line with the one taken by the first defendant.

7. On the basis of these pleadings, the trial court framed the following issues:

“1. 14.2.83 தேதியிட்ட கிரையப்பட்டிரம் உண்மையானதா?

செல்லத்தகுந்ததா?

2. வழக்கு சொத்துக்களைப் பொருத்து வாதிக்கு

நீடனுபாக எதிர்மறை அனுபவ உரிமை சித்தித்துள்ளதா?

3. வாதி முரண்தடை தோஷத்தால் பாதிக்கப்படுகின்றாரா?

4. வழக்கு 3 முதல் 5, 8 அயிட்டத்தில் 26 சென்டு, 1ம்



S.A.No.291 of 2013

WEB COPY

எதிர்வாதிக்கு உரிமையானதா?

5. வாதிக்கு விளம்புகை பரிகாரமும், தடையுறுத்துக்கட்டளை பரிகாரமும் கிடைக்கத்தக்கதா?”

8. The parties went for trial and on the side of the plaintiff, the plaintiff examined himself as PW1 and another witness as PW2 and 19 documents were marked as Ex.A1 to Ex.A19. On the side of the defendants, the first defendant examined himself as DW1 and marked Ex.B1 to Ex.B6. As a third party document, Ex.X1 was filed. The trial court after detailed examination, dismissed the suit in and by way of a judgment dated 28.02.2005.

9. Aggrieved by the same, an appeal was preferred before the learned Principal District Judge, Villupuram in A.S.No.21 of 2009. The learned Appellate Judge confirmed the findings of the trial court and hence, the present second appeal.



S.A.No.291 of 2013

WEB COPY

10. This second appeal came up for admission before this court on 11.03.2014 and the following substantial questions of law were framed for consideration:

“ 1. Whether the Courts below are correct in dismissing the case of the plaintiff in its entirety even though the defendants disputed the title of the plaintiffs only with respect to items 3 to 5 and 26 cents out of 39 cents in item No.8 of the suit properties while the plaintiff has filed the suit with respect of 9 items of the suit properties?

2. Whether the compromise decree in O.S.No.625 of 1991 will operate as resjudicata against the case of the plaintiff when the said suit was not decided on merit and when the plaintiff was not a party in the said compromise decree as he was already set exparte?”

11. Heard Mr.S.Krishnasamy for the appellants and T.Gandhi for



S.A.No.291 of 2013

the respondents.

WEB COPY

12. I have gone through the records and carefully considered the arguments.

13. For the sake of convenience, all the substantial questions of law are taken up together and answered accordingly.

14. The crucial fact in this case is that there have been two suits which had been filed by the parties to the present litigation. The first suit is O.S.No.149 of 1978 and the second suit is O.S.No.625 of 1991. The plaintiff has produced Ex.A17 and Ex.A18 being the judgment and decree in O.S.No.149 of 1978 on the file of the learned District Munsif Court at Tirukoilur. This suit is the suit for partition and separate possession. A preliminary decree seems to have been passed in the said suit. An application has been taken out for passing final decree under Ex.A18, but the same seems



S.A.No.291 of 2013

WEB COPY

to have been dismissed for default. I would concentrate, there is no proof that the final decree was passed in O.S.No.149 of 1978 or to the factum that delivery was taken by Chinna Pillai Ammal, the vendor of the plaintiff herein who conveyed title, which she derived through O.S.No.149 of 1978 to the plaintiff herein. A perusal of Ex.A17 shows that originally it was filed *in forma pauperis* in O.P.No.2 of 1978 and subsequently numbered as O.S.No.149 of 1978. In that suit, though the plaintiff had claimed 1/3rd share in the B schedule mentioned properties, what was granted to her and to the defendants 19 to 21 therein was only 1/6th share in the B schedule mentioned properties.

15. The preliminary decree in a partition suit merely declares a share of the parties, but it is only through a final decree, an executable decree is passed so as to enable the plaintiff or the defendant to take out an application to get allotment of their respective shares. There is nothing on record to show that Chinna Pillai Ammal had presented an application for



S.A.No.291 of 2013

WEB COPY

passing final decree and obtained the same and also took delivery of the property. But the court itself had conveyed only 1/6th share to the Chinna Pillai Ammal and she could not have conveyed the entire suit schedule mentioned property.

16. Apart from this proceedings, Ex.B1 is the copy of the plaint in O.S.No.625 of 1991 suit for declaration of title and for recovery of possession. There were totally 15 items involved in the said suit. In that suit, the first defendant herein was the plaintiff. He had been declared to be the owner of Item 1 to 6, 8 and 9 and portion of the property in item 7, 10, 11, 13, 14 and 15. He seems to have filed an application for execution of the said decree, on the basis of the decree that he has obtained. The present plaintiff who was the defendant in that suit attempted to set aside the decree, but it had all failed. This is clear from Ex.B4 to Ex.B6. His purchase from Chinna Pillai Ammal is on 14.02.1983 and the orders of the Court having passed subsequently in the year 1995.



S.A.No.291 of 2013

WEB COPY

17. The discussion on the aforesaid proceedings is essential in order to come to the conclusion that after preliminary decree passed in O.S.No.149 of 1978, no final decree had come to be passed and therefore, the property continued to be enjoyed as possession prevailed on the date of presentation of aforesaid O.P.No.2 of 1978 / O.S.No.149 of 1978. A person can convey only the title that she or he already possesses. Chinna Pillai Ammal is the absolute owner of 1/6th share of the property and therefore, she could not have conveyed the absolute title by way of sale deed under Ex.A1 dated 14.02.1983.

18. In a suit for declaration of title, the burden of proof is on the plaintiff to show that he derives the title to the property by way of conveyance from a person who possesses antecedent title to the same. That being absent in the present case, the trial court as well as the lower appellate court rightly came to the conclusion that the suit for declaration of title at the instance of the purchaser from Chinna Pillai Ammal is not sustainable.



S.A.No.291 of 2013

WEB COPY

19. Insofar as substantial question of law 1 is concerned, though the defendants claim only items 3 to 5 and a small extent of 26 cents out of 39 cents, that does not mean the decree for declaration of title would automatically follow. The plaintiff has not discharged the burden as to how he obtained the property. He cannot rely upon the weakness of the defendants and plead that on account of the fact that the defendants have claimed title only with respect to a certain portion of the property, he should be declared as the owner of the remaining.

20. The plaintiff not having proved the title, I am constrained to agree with the judgment and decree of the courts below. Consequently, the second appeal is dismissed and the judgment and decree of the court of the Principal District Judge, Villupuram in A.S.No.21 of 2009 dated 09.03.2012 in confirming the judgment and decree of the learned Principal District Munsif at Ulundurpet in O.S.No.328 of 1997 dated 28.02.2005 is confirmed. The dismissal of the suit in O.S.No.328 of 1997 is correct and does not require any interference.



S.A.No.291 of 2013

WEB COPY

21. Having dismissed the second appeal, the point still remains that none of the parties or the persons claiming title through Chinna Pillai Ammal have attempted to obtain final decree in O.S.No.149 of 1978. Chinna Pillai Ammal having transferred her right in favour of the plaintiff in the present suit, it is always open to the plaintiff herein to move an application for passing final decree and workout the equity on the basis of his purchase under Ex.A1. It is only after the final decree is passed and possession is taken, then the plaintiff can claim title to the property.

22. Liberty is granted to the legal heirs of the plaintiff who are the appellants to file an application for passing the final decree in O.S.No.149 of 1978, this second appeal is dismissed. No costs.

02.02.2024

nl

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No



WEB COPY



S.A.No.291 of 2013

To

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



WEB COPY



S.A.No.291 of 2013

V.LAKSHMINARAYANAN, J.

nl

S.A.No.291 of 2013



WEB COPY



S.A.No.291 of 2013

02.02.2024