



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.747 of 2013
and M.P.No.1 of 2013

1.Chinnapillai
2.Karunanidhi
3.Sivalingam
4.Boologam
5.Malarkodi

.. Appellants / Defendants

vs.

K.P.Ramalingam

.. Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.07.2012 made in A.S.No.28 of 2009 on the file of the Subordinate Judge, Ariyalur, reversing the judgment and decree dated 08.12.2008 made in O.S.No.290 of 1993 on the file of the District Munsif Court, Jayankondam.

For Appellants

: Mrs.B.N.Sivagamasundari

for M/s.R.Balasubramanian

For Respondent

: Mr.A.Murugan

JUDGMENT

This appeal arises out of the judgment and decree of the Court of the Subordinate Judge at Ariyalur in A.S.No.28 of 2009 dated 30.07.2012 in reversing the judgment and decree of the Court of the District Munsif at Jayankondam in O.S.No.290 of 1993 dated 08.12.2008.



WEB COPY 2. O.S.No.290 of 1993 was filed for the declaration of title, recovery of possession and mandatory injunction to remove the hut placed over S.No.349/8A.

3. The case of the plaintiff is that S.No.349/8 to an extent of 23 cents belongs to one Rathina Padayachi. The said Rathina Padayachi by way of document dated 13.02.1959 had alienated 8 cents of property to one Sabapathi Padayatchi. Sabapathi Padayatchi, after being in possession and enjoyment of the property for a period of 2 years, settled an extent of 4 cents in favour of one Rasambal and the remaining extent of 4 cents, he alienated in favour of one Samidurai Devar under Ex.A1 dated 15.12.1961. Samidurai, under Ex.A3 dated 07.09.1970, sold the property to Perumal Padayachi. Perumal Padayachi passed away, leaving behind his legal heirs K.P.Ramalingam/plaintiff and Apporvam. Their case is that the defendant had constructed a house on their property and hence, they sought for the aforesaid reliefs.

4. The case of the defendant is that the property of the plaintiff in S.No.349/8A belongs to them absolutely by virtue of Ex.B1 Sale Deed.



According to them, Ambujam, who is the owner of the property, had sold the property to the defendant Kumarasami. Kumarasami did not have any legal heirs, as his wife predeceased him. Therefore, on his behalf the present appellants were impleaded as parties to the suit. Their stand was that there is mis-description of properties and that the property belongs to them absolutely. They also plead that the extent varies and it is not 4 cents from the ground. Apart from that, they plead that the plaintiffs are estopped by virtue of the parent document that showing the plaintiff Ramalingam property as one of the boundaries.

5. On the basis of the pleadings, the Trial Court had framed the following issues:

- (1) தாவா சொத்து வாதிக்கு பாத்தியப்பட்டதா?
- (2) வாதியின் அனுபவத்தில் இருந்த தாவா சொத்து பிரதிவாதி ஆக்கிரமித்து கொண்டாரா?
- (3) வாதி கோரும் செயலுறுத்து கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
- (4) பிரதிவாதிக்கு வாதி நஷ்டஈடு கொடுக்க கடமைப்பட்டவரா?
- (5) வாதி கோரும் பரிகாரம் கிடைக்கத்தக்கதா?



(6) வேறு என்ன பரிகாரம் கிடைக்கத்தக்கதா?

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6. On the side of the plaintiff, Ramalingam / plaintiff was examined as PW1 and apart from that, he had examined 6 other witnesses. Exs.A1 to A11 were marked. On the side of the defendant, the deceased original defendant examined himself as DW1 and his vendor as DW2. The subsequent purchaser of the property in the year 2000, pending the litigation, one Arumugam was examined as DW5. On the side of the defendants Exs.B1 to B10 were marked. Apart from that, the Advocate Commissioner's report and her plan were marked as Exs.C1 to C4.

7. On the basis of the evidence, oral and documentary let in before him, the learned Trial Judge, has come to the conclusion that the plaintiff has not proved the case and dismissed the Suit.

8. Aggrieved by the same, a first appeal / regular appeal was preferred before the Court of the learned Subordinate Judge at Ariyalur. The said appeal suit was allowed, aggrieved by which the present second appeal.



9. This appeal was admitted by this Court on 20.08.2013 on the following substantial questions of law:

(i) Whether the lower appellate court was right in decreeing the suit when Ex.A3 does not refer to the suit property?

(ii) Whether the plaintiff is entitled to the relief of declaration without the proof of title to the suit property?

10. I have heard Mrs.B.N.Sivagamasundari, learned counsel for the appellants / defendants and Mr.A.Murugan, learned counsel for the respondent / plaintiff.

11. Mrs.B.N.Sivagamasundari would submit that the plaintiff has not proved the right, title and interest over the property. She adds that the lower appellate Court had not appreciated the scope of Section 101 of the Indian Evidence Act. She would state that the burden is heavily on the plaintiff to seek declaration of title and the Trial Court has wrongly placed the burden on the defendants. She would state that the lower appellate court had failed to appreciate Ex.A3 and since the plaintiff has not proved the title, the second appeal deserves to be allowed.



12. On the contrary, Mr.A.Murugan would contend that, Swamidurai Devar alienated the property in favour of Perumal Padayatchi under Ex.A3 and Swamidurai Devar had got the property by virtue of document under Ex.A1. He would also draw my attention to Ex.A7, which is the Settlement Register for the building that follows the property and the person who was recorded in the survey number as the revenue holder was Rathina Padayachi, predecessor in title to the plaintiff. He would say that pursuant to the death of Perumal Padayachi, the plaintiff had approached the office of the District Collector and obtained patta for this property under Ex.A4. On these grounds, he would plead that the plaintiff has proved the right, title and interest over the property, whereas the defendants without any right had trespassed into the property and hence, the decree of the lower appellant Court deserves to be confirmed.

13. I have carefully analysed the documents on either side.

14. The tracing of title is essential in this case. From Exs.A1 and A3, it is clear that Rathina Padayatchi, who was the owner of an extent of 23 cents alienated the property in favour of one Sabapathi Padayatchi, who alienated a portion of his holdings to one Swamidurai. Swamidurai in-turn



transferred the property in favour of the plaintiff's father under Ex.A3. Then there is continuous title of the property from 1959 downwards. Per contra, document of the appellants/defendants under Ex.B1 dated 31.05.1971 shows that there is absolutely no narration as to how Ambujam had traced title to the property. Unless and until Ambujam is able to show better and antecedent title than Swamidurai, Perumal Padayatchi, Rathina Padayatchi and Sabapathy Padayatchi, the plaintiff is bound to succeed. By mere filing of registered documents, it cannot be said that the defendant has got ownership over the same. Exs.A1, A3 and A7 are separated by nearly two decades and there is no doubt as to genuineness to the title especially when Ex.A7 - Settlement Register for the area. Mere existence of the Settlement Register alone is not sufficient to prove the title. When the revenue document read along with the registered title deeds which have been filed before this Court, I am able to come to the conclusion that the plaintiff has been able to trace the title of the property. I have seen from the documents that Exs.A1, A3 and A7 tallies with the report of the Advocate Commissioner filed as Exs.C3.

15. It is seen that an extent of 1.5 ares which would approximately correspond to 4 cents in Patta No.1042 was in the name of Ramalingam/plaintiff. The Advocate Commissioner was able to summon the



original records and come to his conclusion. This is reflected in the plan filed under Ex.C4. It is clear that a superstructure of recent origin has been put up in and over the property.

16. The arguments of Mrs.B.N.Sivagamasundari, learned counsel for the appellants that Ex.A3 does not reflect the suit property, does raises doubt. Therefore, I called for the records and found that this very property has been subject matter of alienation. The relevant extract is as under:

"மேற்படி நம்பரில் வேலாயுதபடையாச்சி கட்டிடமனைக்கு (கி)இ (வ) பிச்சமுத்து தோட்டத்துக்கு (மே) தருமலிங்கபடயாச்சி நிலத்திற்கு (தெ) இதில் 0.10/349 8 0.23 ல் பாதைக்கு (கி) தருமலிங்கபடயாச்சி பாகத்திற்கு (தெ) மேல்கண்ட வீட்டுக்கு (மே) வேலாயுதபடயாச்சி பாகத்துக்கு (வ) இதில் 0.04ம் இதில் வரி 6ல் 01ங் அடித்தல் 8ல்,ட்டிடத விளம்பல் 12.ல் ஓட்டுவில்லை. வரிவிளம்பு."

Therefore, first question of law framed that the title deed is in contrary of records, necessarily has to be rejected and therefore, it is rejected.

17. In respect of second question of law, her plea that the plaintiff has not proved his title to the property. I have already decided supra that Exs.A1,



A3 and A7 would show that the property flows from Sabapathy Padayatchi, and Rathina Padayatchi through Swamidurai Devar and finally alienated in favour of the father of the plaintiff. The plaintiff having proved the title of the suit property through satisfactory title deeds as well as revenue documents and the property localised by the Advocate Commissioner under Ex.C3, I do not find that second question of law arises for consideration.

18. The second appeal is dismissed. Consequently, the judgment and decree dated 30.07.2012 in A.S.No.28 of 2009 on the file of the Subordinate Judge, Ariyalur, reversing the judgment and decree dated 08.12.2008 made in O.S.No.290 of 1993 on the file of the District Munsif Court, Jayankondam, is set aside. No costs. Consequently connected miscellaneous petition is dismissed.

13.03.2024

Index : Yes / No
Internet : Yes / No
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To
1.The Court of Subordinate Judge,
Ariyalur.

2.District Munsif Court,
Jayankondam.



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V.LAKSHMINARAYANAN. J

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