



S.A.No.785 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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1.Palaniammal

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

(R4 already on record who is



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the legal heir of the deceased

R3)

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... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree in A.S.No.19 of 2009 dated 09.03.2012 on the file of the Principal District Judge, Villupuram, confirming the Judgment and Decree in O.S.No.1303 of 1995 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.19 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.1303 of 1995 dated 28.02.2005.



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2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. The legal heirs of the plaintiff are the appellants herein. One Muniya Kounder presented O.S.No.1303 of 1995 seeking for declaration of title and for injunction, based on the sale deed executed by one Chinnapillai Ammal on 05.08.1983.

4. The case of the plaintiff is that the property is the absolute property of his vendor and he had purchased the same from her by way of a registered sale deed on 05.08.1983 for valuable sale consideration of Rs.2,500/-. Since the defendants attempted to interfere with his possession on 19.09.1995, he came forward with a suit for declaration of title and for injunction.



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5. The first defendant filed a written statement stating that Chinnapillai Ammal did not have a right to transfer the absolute title in favour of the plaintiff. He further pleaded that the father of the first defendant viz., Muniya Kounder, son of Govinda kounder had executed the deed of settlement in his favour with respect to items 3 and 4 of the property on 15.09.1975 and on and from that date, he became the owner of the property. Though he had become the owner, Chellammal and Muniya Kounder taking advantage of the fact that the first defendant was still a minor started to alienate the property. This constrained the first defendant to file O.S.No.625 of 1991 on the file of the learned District Munsif, Tirukoilur for declaration of title and for recovery of possession. In the said suit, after the parties had entered appearance, compromise talks had taken place and a compromise decree was passed on 08.06.1994. Items 3 and 4 in the said suit were allotted to the first defendant herein(who was the plaintiff in the other suit). On the basis of the decree, he filed E.P.No.176 of 1995 and took delivery of items 3 and 4 on 30.08.1995.



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6. On these pleadings, the trial court framed the following issues:

“1. வழக்குச் சொத்துக்கள் சின்னப்பிள்ளை அம்மாள், ராமானுஜக்கவுண்டர், முருகன், மற்றும் பார்வதி ஆகியோர்களுக்குப் பாத்தியமானதா?

2. வாதி பேருக்கு 05.08.01983ம் தேதியில் ஏற்பட்ட கிரயம் உண்மையானதா?

3. வழக்கு 3,4 அயிட்டிச் சொத்துக்கள் 1,2,5 பிரதிவாதிகள் மற்றும் பாப்பா அம்மாள் ஆகியோருக்குப் பாத்தியமானதா?

4. 2ம் பிரதிவாதி பேருக்கு 1.09.1995 தேதியில் வழக்கு 3,4 அயிட்டிச் சொத்துக்களை பொருத்து ஏற்பட்ட கிரயம் உண்மையானதா? சட்டப்படி செல்லக்கூடியதா?

5. வாதி வழக்குச் சொத்துக்களைப் பொருத்து விளம்புகை மற்றும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற உரிமை உடையவரா?

6. வாதி அடையத்தக்க வேறு பரிகாரம் என்ன?”

7. The parties went for trial and two witnesses examined on the side of the plaintiff as PW1 and PW2 and Ex.A1 to Ex.A14 were marked and on the side of the defendants, the fourth defendant examined himself as DW1 and Ex.B1 to Ex.B3 were marked.



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8. The trial court after careful perusal and consideration of the matter before it, dismissed the suit. Against the said judgment and decree, an appeal was preferred in A.S.No.19 of 2009 on the file of the learned Principal District Munsif, Villupuram. The learned judge on 09.03.2012 dismissed the appeal confirming the judgment and decree of the trial court. Hence, this second appeal.

9. The second appeal was admitted on the following substantial questions of law on 11.03.2014:

“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 of items 3 and 4 of the suit properties while the plaintiff has filed the suit with respect of 4 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 whe the said suit was not decided on



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merit and when the plaintiff was not a party in the said compromise decree as he was already set ex parte?”

10. I heard Mr.S.Krishnasami for the appellants and Mr.T.Gandhi for the respondents.

11. I have gone through the judgments and perused the records and considered the arguments.

12. The entire case of the plaintiff is that his vendor Chinnapillai Ammal is the owner of the property. Therefore, unless and until, the plaintiff proves that Chinnapillai Ammal has the absolute title to the property, he cannot claim any right by virtue of the sale deed dated 05.08.1993. The records reveal that Chinnapillai Ammal herself filed a suit for partition as *in forma pauperis* in O.P.No.2 of 1978, which was subsequently numbered as O.S.No.149 of 1978 on the file of the learned District Munsif at Thirukoilur. She had claimed 1/3rd share in the property. However, the court was pleased



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to declare 1/6th share to the said Chinnapillai Ammal. Chinnapillai Ammal

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seems to have been contended, after having obtained the preliminary decree.

She did not take any further steps to get the preliminary decree to convert into an executable decree by filing an application for final decree. Unless and until, the final decree is passed, the plaintiff in the suit for partition cannot get an executable decree. Since no final decree was passed, she did not seem to have filed any execution petition.

13. The only positive she seems to have done is that she sold the property in favour of the present plaintiff by way of a sale deed dated 05.08.1983. Unless and until, the plaintiff in this suit is able to show that Chinnapillai Ammal had taken possession of the property under the sale deeds, all that she could have alienated by way of sale deed dated 05.08.1993 is her right under the decree which is to file an application for final decree. The final decree not having been passed, it would always be open to the plaintiff to file an application in O.S.149 of 1978 on the file of the learned



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District Munsif and claim allotment of the shares in the property in terms of the preliminary decree. That not having been filed, the present suit for declaration of title necessarily will have to fail.

14. Chinnapillai Ammal as stated above, had only transferred her right in the property and her right was only a fractional share of 1/6th as declared in the previous suit. Apart from that, on the basis of the decree in O.S.No.625 of 1991 filed by the first defendant herein for declaration of title and for recovery of possession, he had filed an execution petition and had also taken delivery of the same. In fact in those proceedings, the present plaintiff was impleaded as a defendant and he attempted to set aside the decree, which ended in a dismissal and was confirmed till the High Court.

15. The only remedy that the plaintiff is entitled in this suit is to file an application for final decree and seek for allotment of shares. On the basis of the sale deed dated 05.08.1983, he is not entitled for declaration of title as



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his vendor do not have any absolute right to the property.

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16. The trial court as well as the lower appellate court have rightly come to a conclusion that the plaintiff has not proved his absolute title to the property. The factum that the defendant had made a claim only with respect to four items and not with respect to the remaining, does not mean the plaintiff in this suit would automatically be entitled for declaration of title. Even the defendants were remained exparte, the plaintiff still has to prove his title to the suit property. That not having been done in the present case, I am not in a position to come to the rescue of the plaintiff.

17. Consequently, the judgment and decree in A.S.No.19 of 2009 on the file of the learned Principal District Judge, Villupuram dated 09.03.2012 in confirming the judgment and decree of the learned Principal District Munsif, Ulundurpet in O.s.No.1303 of 1995 dated 28.02.2005 is confirmed. The second appeal is dismissed.



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18. I make it clear that the dismissal of this second appeal will not prevent the plaintiff or his legal heirs to move an application for passing of final decree in O.S.No.149 of 1978 on the file of the learned District Munsif, Tirukoilur. It is settled position, nonetheless I am reiterating that the suit for partition is deemed to be pending till the final decree is passed. The plaintiff, having purchased from Chinnapillai Ammal by way of a sale deed dated 05.08.1983, will always be entitled to move an application for a final decree, but is not entitled to claim absolute title on the basis of the present suit for partition. Accordingly, the appellants who are the legal heirs of the plaintiff is at liberty to file an application for a final decree. No costs.

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Index : Yes/No

Speaking order/Non-speaking order



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Neutral Citation : Yes/No

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To

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



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V.LAKSHMINARAYANAN, J.

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