



SA. No.249 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04. 2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1 S. SELVARAJ

... Appellant

Vs.

- 1 CHINNAPAYAN
S/O SUBRAMANI NELLIKUPPAM MOTTUR VILLAGE
H/o MUKUNDARAYAPURAM WALAJAH TALUK VELLORE
DIST.
- 2 THE TASHILDAR
TALUK OFFICE WALAJAH VELLORE DIST.
- 3 THE COLLECTOR
VELLORE DISTRICT OFFICE OF SATHUVACHARI
VELLORE.
- 4 THE ASSISTANT COMMISSIONER
AUTHORIZED OFFICER OFFICE OF THE ASSISTANT
COMMISSIONER OF LAND REFORMS VILLUPURAM.

...Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure



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Code, to set aside the judgment and decree dated 01.04.2015 made in O.S No. 66 of 2005 on the file of the District Munsiff Court, Ranipet as confirmed by the Court of the Subordinate Judge, Ranipet in A.S No. 30 of 2015 dated 14.10.2015. and after setting aside the same.

For Appellant : Mr.R.Rangarajan
For R1 : Mr. S.Mukunth
for M/s Sarvabhauman Associates.
For R2 to R4 : Mr.B.Tamil Nidhi

JUDGMENT

The appellant herein is the defendant in suit O.S No. 66 of 2005, on the file of the District Munsif Court, Ranipet, filed against him by the first respondent herein for the relief of declaration and permanent injunction in respect of suit property situated in Vellore District, Walajah Taluk ,Mukunthrayapuram Village in (first item) S. No. 357/2E(now as per revenue record 357/2A) with an extent of 0.55.0 Hectare with four



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boundaries in time and other suit property (second item) in S.No. 357/2C(now as per revenue records 357/2B) 040.5 hectare with four boundaries absolutely belongs to the plaintiff by way of sale deed dated 20.06.1984. Thereafter, he enjoyed the property as absolute owner in which the defendant claiming title over the first item of the suit property caused interference. Hence, the suit. In respect of second item of the suit property the defendant not raised any claim he only disputing the first item of the suit property. Therefore, the present appeal only pertaining to the first item of the suit property alone.

2. The brief facts of the case:

Originally suit property and other properties are belongs to one Muslim Prop of M.B.D. Motors. As per the Tamil Nadu Reform(Fixation of Ceiling of lands) Act, 1961(in short " Act") divided the said lands into several portions and given to several landless persons and one such portions is the first item of the suit property which was allotted to one Ramasamy son of Appadurai through Form F the deed of assignment of Surplus Land under Section 94 of the Act dated 10.09.1970. Thereafter, the said Ramasamy and his brother sold the said property(first item of the suit property) to the plaintiff through registered sale deed dated 20.06.1984.



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Thereafter, plaintiff being in possession and enjoyment of the said property

WEBCO .S.No. 357-2E now as per revenue records S.No. 357-A(first item of the suit property). Admittedly, the second item of the suit property in S. No. 357-2C now as per revenue records S.No. 357/2B,.Further the plaintiff claimed right over the suit property based on the title deed of the year 1984 which was marked as Ex.A1. The first defendant is the adjacent land owner who contended that he is the owner of the first item of the suit property and she claimed title over the property based on the sale deed purchased from one Tangavel who got that property by way of assignment made in survey No. 357-2, based on the revenue records. But as per the revenue records the survey number pertaining to the suit property is 357-2A. Admittedly, the defendant purchased the property in S.No. 357-2A to that effect he produced the sale deed/Ex.B9 dated 26.10.1999. Based on that survey Number in the suit property the defendant claiming right over the plaintiff's suit property.

3. Before the Trial Court both parties adduced their evidence as well as the the title deeds and other documents. Considering the oral and documentary evidence the Trial Court held that suit property belongs to the plaintiff and declared the plaintiff is absolute owner of the first item of the



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suit property as there is no dispute in respect of second item of the suit property. Accordingly, the suit was decreed in favour of the plaintiff.

Against which the defendant filed the appeal in A.S No. 30 of 2015 on the file of District Munsif Court, Ranipet, which independently analysed oral and documentary evidence confirmed the findings of the Trial Court by holding that as per the records the suit property was belongs to the plaintiff but it was wrongly entered as 357-2A but the same can be rectified through order of revenue authorities. Therefore, the contention of the first defendant is negatived.

4. Challenging the concurrent findings of the Courts below, the defendant preferred this second appeal.

5. The learned counsel for the appellant submitted that the Court below failed to appreciate the document relied by the defendant and if at all any errors committed in the revenue records the plaintiff ought to have moved to the revenue authorities without which he approached the Court for the relief as such is erroneous one and the same is liable to be set aside. Further, he pointed out that the Court below failed to taken into note of the fact that even after long time was lapsed the revenue authorities not inclined to pass any order in favour of the plaintiff though he filed the application for



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patta which itself shows that the plaintiff title is under dispute but the Trial Court failed to appreciate all these facts. Further he argued that Court below has no right to decide the rectification or correction in patta particularly when the competent forum was seized of the matter thereby prayed to set aside the findings of the Trial Court.

6. This Court admitted the appeal with the following substantial questions of law:

1. Whether the Courts below have not erred in finding that the relief's asked for in the plaint will not come within the ambit of Order 7 Rule 1 CPC?

2. Whether the Courts below have not erred in entertaining a suit for setting aside a registered document without a proper prayer for the same?

3. Whether the Courts below have not erred in failing to consider that the Evidence Act precludes the filing of a suit which challenges a registered document which the plaintiff can not do as per Section 91 of Indian Evidence Act?

4. Whether the courts below have not erred in elaborately considering the question of possession which has been already by the defendant?

5. Whether the Courts below have not understood the proper scope of



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the judgment and decree in O.S No. 82 of 2000 in the same court of DMC,

WEB CO Ranipet?

7. By relying sale deed executed by Thangavel Reddiar in favour of Selvaraj in the year 1999 the first defendant claiming right over the property. It is an admitted fact that previously S.No. 357 was belonged to one Muslim Family and the same was allotted to land less people as per the proceedings of the "Act". The survey number mentioned in the document is 357-2A so also patta/Ex.B13 stands in the name of the defendant in respect of the said S.No. 357-2A. But the first item of the suit property described in the suit schedule as well as description of the property found in the Ex.A1/sale deed are one and the same described as follows:

நா.ஆ.டி., அரக்கோணம் டி.ரி. ஆபிஸ், வாலாஜா சப்.டி., வாலாஜா ப.யு சம்பந்தப்பட்ட முகுந்தராயபுரம் கிராமத்தில் எங்களுக்கு பிதுராஜ்ஜிதமாயும் நில உச்ச வரம்பு பட்டா ஸீலமும் கிடைத்தது அனுபவித்து வரும் நிலமானது புஞ்சை சர்வே 357 2ஈ பூரா 0.55.0 இதற்கு ஜெக்பந்தி ராமாஞ்சி நிலத்திற்கு (வ) ஸ்வாமிஸ் கேப் நாராயணசாமி ஐயர் நிலத்திற்கு (தெ) பொன்னை அணைகட்டு கால்வாய்க்கு கிழக்கு, க.சுந்தரபிரீத்தி வகையறா நிலத்திற்கு மேற்கு.

8. But in Ex.B9/ Sale deed (the property purchased by the defendant from Thangavelu) the schedule of the property described as follows:

வேலூர் மாவட்டம் அரக்கோணம் பதிவு மாவட்டம்இ வாலாஜா வட்டம், வாலாஜா நகர் சார்பதிவாளர் அலுவலகத்தை சேர்ந்த 60 முகுந்தராயபுரம் கிராமம் புஞ்சை சர்வே எண். 357 2 ஏ



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பூரா 0,40,2 ஏக்கர் 1.00 தீர்வை 0.81

செக்வந்தி விபரம்

பேனபல்லி முனிசாமி வகையறா நிலத்திற்கு தெற்கு

தனபால் வகையறா நிலத்திற்கு வடக்கு

சின்னபையன் நிலத்திற்கு கிழக்கு

ஜெகந்நாதன் நிலத்திற்கு மேற்கு

இதன் மத்தியில் மேற்படி விஸ்தீரணம் ஏக்கர் 1.00 மேற்படி சொத்து முகுந்தராயபிரம் கிராமம் பஞ்சாயத்து வாலாஜா பஞ்சாயத்து யூனியன் எல்லைக்குட்பட்டது.

9. Therefore, the survey Number pertaining to the property purchased by the plaintiff in Ex.A1 was S.No. 357-2E property but property purchased by the defendant through Ex.B9 is 357-2A. So, it is evident that the plaintiff is not claiming any right over the property mentioned in Ex.B9. Now the dispute is with regard to the survey number. Though the plaintiff's property is S.No.357-2E but as per the revenue records it is mentioned as S.No. 357-2A. Admittedly, there is no document produced on the side of the of the plaintiff to prove that S.No. 357-2E was allotted to some third parties. As per Ex.A1/sale deed the plaintiff proved his title with four boundaries. However, in the revenue records the suit property is mentioned as 357-2A instead of 357-2E but the plaintiff proved his title and he is entitled to rectify the said mistake before the revenue records for that he is empower to approach the concerned authorities. Therefore, the objection of the appellant/first defendant that the suit property is not belongs to the plaintiff with survey No. 357-2A as such is totally wrong as discussed above the suit



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property belongs to the plaintiff and the property purchased by the defendant through Ex.B9 is not been under dispute and the Court below rightly declared the plaintiff as absolute owner of the property accordingly question of law 2 and 3 is answered. **Therefore, there is no necessity for separate prayer to declare the sale deed belongs to the plaintiff as null and void. Admittedly, there is no prayer in that plaint with regard to the prayer of Ex.B9 stands in the name of the defendant and plaintiff not claiming right in S.No. 357-2A. On the other hand, plaintiff proves the ownership of the S.No. 357-2E. Therefore there is no necessity to seek relief against the sale deed of the defendant.** Accordingly, question of laws are answered. The Court below rightly held that the plaintiff is owner of the property and declared his title which needs no interference.

10. In the result, this appeal is dismissed. No Costs. Consequentially connected miscellaneous petition is closed.

15.04.2024

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Note: Issue order copy on or before 28.06.2024.



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T.V.THAMILSELVI,J.

Pb1

To

1. The District Munsiff Court, Ranipet.
2. The Subordinate Judge, Ranipet.
3. The Section Officer,
V.R Section.

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