



S.A(MD)No.406 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 28.06.2024

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

S.A(MD)No.406 of 2011

and

M.P(MD)No.2 of 2011

1.Duraisamy

2.Annadurai

... Appellants/Appellants/Plaintiffs

-VS-

Periyasamy

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 15.02.2008 made in A.S.No.168 of 2006 on the file of the Principal District Judge, Tiruchirappalli, confirming the Judgment and Decree dated 09.09.2005 made in O.S.No.223 of 1998 on the file of the District Munsif, Thuraiyur.

For Appellants

... Mr.V.Janakiramulu

For Respondent

... Mr.R.Gowri Shankar



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JUDGMENT

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With the consent of both sides, this second appeal is taken up for final disposal at the admission stage itself.

2.The appellants, as the plaintiffs, has filed the suit in O.S.No.223 of 1998 on the file of the District Munsif Court, Thuraiyur, seeking the relief of declaration and recovery of possession of the suit property. After trial, the said suit was dismissed. Against which, the appellants/plaintiffs filed the appeal in A.S.No.168 of 2006 on the file of the Principal District Judge, Tiruchirappalli. After hearing, the first appellate Court dismissed the appeal suit and confirmed the Judgment and Decree passed by the Trial Court. Aggrieved over the same, the appellants/plaintiffs filed the present second appeal.

3. The case of the appellants/plaintiffs is that the suit property is the ancestral property of the appellants/plaintiffs' father Pachamuthu Samban and the respondent/defendant's father Perumal. The said Pachamuthu Samban and his brother Perumal divided the property by way of an oral partition. Based on which, each get 0.51 cents of land.



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The suit property was allotted to the appellants' father and thereafter, the appellants/plaintiffs are in possession of the same. During his life time, Pachamuthu mortgaged 0.51 cents of land to one Chinnaguru Naicken. After discharge of the mortgage, Pachamuthu was in possession of the said property. Twenty years back, the appellants/plaintiffs went to Karnataka State to eke out their livelihood and they left the suit property under the care of the respondent/defendant. In 1996, the appellants/plaintiffs returned to their native place, but the respondent/defendant refused to give possession of the property to the appellants/plaintiffs. In the panchayat also, the respondent/defendant refused to give possession of the property to the appellants/plaintiffs. Hence, the suit for declaration and recovery of possession of the suit property.

4. The case of the respondent/defendant is that it is admitted that the suit property originally belonged to the appellants/plaintiffs' father Pachamuthu Samban and the respondent/defendant's father Perumal Samban. They divided the property orally. The appellants/plaintiffs' father mortgaged the property on 30.11.1964 to one Guruva Naicken. Thereafter, the appellants/plaintiffs' father sold his share to one



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Thirumalai on 26.10.1967 subject to the mortgage. On the date of sale

itself, the mortgage debt was discharged and the property was given to

Thirumalai. Subsequently, the said Thirumalai sold the property to the

respondent/defendant's mother Valliammal. Thus, the entire suit

property was under the possession and enjoyment of the

respondent/defendant's parents and subsequently, the defendant is in

possession of the entire suit property. Mutation of the revenue records

were also effected in the name of the respondent/defendant. The

respondent/defendant spent upto Rs.50,000/- for deepening the Well and

to fix electric motor and raised crops in the suit property. The

appellants/plaintiffs requested the respondent/defendant to give the share

of their father on sale. The respondent/defendant refused for the said

proposal and hence, this false suit has been filed by them. The suit is bad

for non-joinder of the wife and daughter of Pachamuthu Samban. The

respondent/defendant has filed a suit in O.S.No.108 of 1999 on the file of

the District Munsif Court, Thuraiyur for permanent injunction against the

appellants/plaintiffs herein and the same is pending. The suit property is

the absolute property of the respondent/defendant. The

appellants/plaintiffs have not filed the suit with *bona fide* intention. The

suit is liable to be dismissed.



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5. The trial Court, considering the pleadings, framed the issues.

During trial, on the side of the appellants/plaintiffs, five witnesses were examined and 14 documents were marked as Exs.A1 to A14. On the side of the respondent/defendant, two witnesses were examined and 17 documents were marked as Exs.B1 to B17. Besides, Ex.C1 was marked.

6. Considering the above pleadings, oral and documentary evidence, the Trial Court dismissed the suit. Therefore, the appellants/plaintiffs filed the appeal before the first appellate Court. However, the first appellant Court also dismissed appeal. Hence, the appellants/plaintiffs have moved before this Court.

7. The learned counsel for the appellants/plaintiffs would submit that the learned first appellate Judge has erroneously dismissed the suit mainly relying on Ex.B1 and Ex.B2, which is denied by the appellants/plaintiffs. The first appellate Court ought to have allowed the appellants/plaintiffs to call for the witnesses, who have affixed their signature in Exs.B1 and B.2. The first appellate Court dismissed the petition without assigning any valid reasons. The first appellate Court



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ought of have considered how the Tahsildar issued patta in favour of the respondent/defendant. He would further submit that after the discharge of mortgage, the possession of the property was with the appellants' father Patchamuthu Samban, hence, Ex.B2-deed is not valid. However, the said aspect has not been considered by the trial Court as well as the first appellate Court. The first appellate Court has not looked into the evidence in proper perspective. Hence, the learned counsel prays to set aside the Judgment of the Courts below.

8. The learned counsel for the respondent/defendant would submit that the Judgment of both the trial Court as well as the first appellate Court are well reasoned and requires no interference. Hence, the learned counsel for the respondent/defendant prays for dismissal of this second appeal.

9. Heard both sides and perused the materials available on records.

10. On a perusal of the records, it reveals that even it is stated that the possession of the property has been handover to the defendant, when the plaintiffs went to Karnataka, they have failed to prove the same by



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way of oral and documentary evidence. Even though the plaintiffs claim over the suit property as against the defendant, they have not argued to substantiate their grounds in appeal and there is no prayer to set aside the Sale deeds executed in favour of Thirumalai and Valliammal and failed to prove their title and possession over the suit property by letting in proper oral and documentary evidence.

11.It is seen from the Judgments of the Trial Court and the First Appellate Court after considering the Sale Deeds and Revenue Records and Electricity Connection in the name of the defendants, both the Courts have rightly dismissed the suit with concurrent findings.

12. Under these circumstances, this Court finds that the appellants/plaintiffs have not established their case in this second appeal. Therefore, this Court does not find any perversity in appreciating and re-appreciating the evidence by both the Courts below and no substantial question of law is involved in this second appeal.

13. In the result, this Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.



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NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The District Munsif, Thuraiyur.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

A.A.NAKKIRAN, J.

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