



S.A.(MD)No.388 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.07.2024

PRONOUNCED ON:06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.388 of 2019

and

C.M.P.(MD)Nos.7813 of 2019 and 9659 of 2023

Shanmuganathan

: Appellant/Appellant No.1/
Defendant No.1

Vs.

1.Ganapathi Thevar

: 1st Respondent/Respondent/
Plaintiff

2.Murugesan

3.Manikandan

: Respondents 2 & 3 / Appellants
2&3/Defendants 2 & 3

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 27.03.2019 made in A.S.No.4 of 2019, on the file of the Subordinate Judge, Aruppukkottai, confirming the decree and judgment in O.S.No.215 of 2008, dated 19.11.2018, on the file of the Additional District Munsif, Aruppukkottai.



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For Appellant : Mr.S.Parthasarathy
For Respondents :Mr.R.Ramadurai
for R.1
:No Appearance
for R.2 and R.3

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.4 of 2009, on the file of the Subordinate Court, Aruppukkottai confirming the judgment and decree made in O.S.No.215 of 2008, dated 19.11.2018, on the file of the Additional District Munsif Court, Aruppukkottai.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The first defendant is the appellant and the first respondent as plaintiff has filed the above suit to declare that the suit property belongs to the plaintiff and for consequential permanent injunction restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.



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4. The case of the plaintiff is that the suit property originally belonged to one Ganesan and his coparceners Sivagnanam, Gurunathan and Pakkiya Thevar ancestrally, that the above four persons sold the suit property in favour of the plaintiff vide sale deed dated 27.09.1982 and since then, the plaintiff has been in possession and enjoyment of the suit property, that the suit property was in Natham Survey No.27/13 earlier and during the Natham survey in the year 1992, patta was granted to the plaintiff in S.No.198/10, that a property measuring 5 feet of North South and 22 feet of East West situated on the south western portion of the suit property was originally owned by one Periyasamy and others and the first defendant has purchased the suit property vide sale deed dated 15.12.1977, that the said sale deed and another sale deed dated 30.04.1981 in respect of the south eastern portion of the suit property referred the suit property as one belonging to the plaintiff's vendor Muthulinga Thevar and others, as their boundary, that the defendants have no right or possession over the suit property, that the defendants have denied the title of the plaintiff in the suit property and attempted to interfere with his possession from 18.08.2008 onwards and that therefore, the plaintiff was constrained to file the above suit for declaration and permanent injunction.



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5. The defence of the defendants is that the suit property originally belonged to one Arumuga Thevar, S/o Inikka Thevar, that the said Arumuga Thevar sold the property to Periyakaruppa Thevar, vide sale deed dated 05.09.1914, who in turn sold the property to the defendants, vide sale deed dated 15.12.1977 and since then, the defendants have been in possession and enjoyment of the suit property, that the plaintiff and his alleged predecessors in title, have absolutely no title, right or possession over the suit property, that the sale deed dated 27.09.1982 is a fraudulent one and the vendor Ganesan himself was not possessing any right in the property, that since the suit property is a land, the question of issuing any patta in favour of the plaintiff does not arise at all, that the plaintiff has no cause of action to file the above suit and the cause of action alleged is false and untenable and that since the plaintiff has failed in his attempt to purchase the suit property, in order to grab the same, has filed the above suit and that the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings, has framed the following issues:



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(1) Whether the plaintiff is the absolute owner of the suit property?

(2) Whether the plaintiff is entitled to the relief of declaration and consequential permanent injunction as prayed for?

(3) To what other relief?

7. During trial, the plaintiff has examined himself as P.W.1 and exhibited 5 documents as Exs.A.1 to A.5. The defendants have examined the first defendant as D.W.1 and exhibited 2 documents as Exs.B.1 and B.2. Though the plaintiff has examined one Ganesan as P.W.2 and exhibited the copy of the Aadhar Card as witness document as Ex.X.1, he died before cross-examination and as such, the evidence of P.W.2 and the document under Ex.X.1 were rightly eschewed from the consideration.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 19.11.2018, granting the reliefs of declaration and permanent injunction as prayed for. Aggrieved by the judgment and decree of the trial Court, the defendants have preferred an appeal in A.S.No.4 of 2019 and the learned appellate Judge, upon considering the materials available on records and on hearing the



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arguments of both sides, has passed the impugned judgment and decree, dated 27.03.2019, dismissing the appeal and thereby confirmed the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the present Second Appeal came to be filed.

9. At the time of admission, the following Substantial Questions of Law came to be framed:

(a) Whether the judgment of lower appellate Court extracting the judgment of trial Court and approving the same without independent application of mind is proper?

(b) Whether the plaintiff has established his title by proving that his vendor had title to the property to execute the sale deed?

C.M.P.(MD)No.9659 of 2023:

10. The appellant has filed a petition in C.M.P.(MD)No.9659 of 2023 for the reception of additional evidence under Order 41 Rule 27 C.P.C.



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11. The case advanced by the petitioner/appellant in the affidavit filed support of the above petition is that the plaintiff has mainly relied on Ex.A.3 patta which came to be issued after filing of the suit, that granting of patta in respect of the vacant land in Grama Natham is unknown, that the petitioner's Counsel required the petitioner to enquire about Ex.A.3 patta issued by the revenue department and the petitioner moved the revenue authorities under the Right to Information Act and gathered information that the patta – Ex.A.3 is a patta based on the assignment of house site to the first respondent, that the first respondent was all along projecting the case as if patta was issued to him on the basis of his title, that the information obtained is very vital and goes to the root of the matter and that therefore, the petitioner was advised to produce the written information obtained under the Right to Information Act as additional evidence and that the petitioner was not aware of those material information at the time of suit and regular appeal and only upon the instructions of his Counsel, and with much persuasion, he was able to get such valuable information.

12. The first respondent has filed counter affidavit stating that the information obtained by the petitioner has no bearing to the stand of the



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petitioner/appellant's case and in fact, the said document has fortified the case of the first respondent, that the petitioner has filed the above petition to receive the document as additional evidence at the stage of the Second Appeal and the same is not permissible and moreover, the question of law alone can be decided in the Second Appeal and that the above petition is vexatious and as such, the same is liable to be dismissed with exemplary costs.

13. Whether the document produced along with the above petition can be received as additional evidence is the point for consideration?

14. Before entering into further discussion, it is necessary to refer Order 41 Rule 27 C.P.C., hereunder for better appreciation:

“Production of additional evidence in Appellate Court:

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of



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due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

15. In the present case, the petitioner/appellant has produced a reply received from the office of the Tahsildar, Kariyapatti, in pursuance of his petition filed under the Right to Information Act. It is not the case of the petitioner that he had produced the said reply before the trial Court and the trial Court has refused to receive the same as evidence. No doubt, the petitioner in his affidavit has alleged that only as per the directions of the Counsel on record, he applied under the Right to Information Act and obtained the reply now sought to be received as additional evidence.



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corroborate or to confirm the information furnished. Considering the above, this Court has no hesitation to hold that the above petition is absolutely devoid of merits and the same is liable to be dismissed.

18. The plaintiff has claimed ownership over the suit property through the purchase made by him from one Ganesan and his coparceners Sivagnanam, Gurunathan and Pakkiya Thevar, vide sale deed dated 27.09.1982 under Ex.A.2, whereas the defendants have claimed ownership through purchase from one Periyakaruppa Thevar, vide sale deed dated 15.12.1977, who in turn purchased the said property from Arumuga Thevar, vide sale deed dated 05.09.1914 under Ex.B.2. But during trial, the first defendant, in his chief examination affidavit, has taken a stand that since the legal heirs of Peiyakaruppa Thevar from whom they have purchased the property on 15.12.1977 have made a claim over the property, in order to avoid any issues, purchased the very same property from the legal heirs of Periyakaruppa Thevar, vide sale deed dated 11.08.2008 under Ex.B.2.

19. The plaintiff has filed the suit for the property measuring 39 feet East West and 17 feet North West situated in New S.No.198/10 (Old



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S.No.27/13) of Arasakulam Village, Kariyapatti Taluk. No doubt, the plaintiff has produced the sale deed under Ex.A.2 in respect of the suit property. It is the specific case of the plaintiff that the sale deeds in respect of the property situated on south of the suit property were also referring the suit property belonging to the plaintiff's vendor as their boundaries. The plaintiff has produced the certified copy of the sale deed dated 15.12.1977 under Ex.A.4 wherein the first defendant has purchased the property measuring 5 feet North South and 22 feet East West from Periyasamy and others.

20. As rightly pointed out by the learned Counsel for the plaintiff, in Ex.A.4 – sale deed, the suit property belonging to Muthulinga Thevar Vagaiyara was shown as the northern boundary of the property purchased therein. The plaintiff has also produced the certified copy of the another sale deed dated 30.04.1981, wherein one Gandhi Ammal has purchased the property situated on the southern portion of the suit property and in that document also, the property belonging to Muthulinga Thevar Vagaiyara was shown as northern boundary.



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21. The first defendant in his cross-examination has specifically admitted that the suit property was referred as northern boundary for the property purchased under Ex.A.4 and his evidence is extracted hereunder:

“ 15.12.77 ல் எனக்கு எழுதிக்கொடுத்தவர் பெரியசாமி என்கிற நமட்டாமை என்றால் சா. வா.சா.ஆ.4 ஆக குறியீடு செய்யப்பட்டுள்ள மூன்றடி பத்திரம் பத்திரத்தில் வடக்கு மாலில்கண்டுள்ள முத்துலிங்கத்தவர் வகையறா என்பவர்கள்தான் வாதிக்கு கிரையம் கொடுத்தவர்கள் என்றால் சரிதான்.”

22. It is pertinent to note that the defendants have taken a specific stand that they have purchased the suit property vide sale deed dated 15.12.1977. But admittedly, they have not chosen to produce the said sale deed. As already pointed out, the plaintiff has produced the sale deed dated 15.12.1977 as Ex.A.4. But it is not the specific case of the defendants that apart from Ex.A.4, they have taken another sale deed on 15.12.1977 itself in respect of the suit property. During cross-examination, D.W.1 would say that he does not know the east west extent, what they have purchased in the year 1977.



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“77ல் வாங்கிய பத்திரம் கிழமலாக எத்தனை அடி வாங்கினாம் என்றால் தெரியாது. மும்பை பத்திரத்தில் தாவா சொத்து எத்தனையாவது லேக்கமாக உள்ளது என்றாலும் தெரியாது. தென்வடல் 5 அடி கிழமல் 22 அடி பத்திரத்தில் கண்டுள்ளது என்றால் அது எனக்குத் தெரியாது. எனக்கு படிக்கத்தெரியாது. அதனால் எத்தனையடி அளவுகள் குறிப்பிட்டுள்ளது என்றும் தெரியாது.

..... பிசா.ஆ.1 தாவா சொத்திற்குரியது. இந்த பத்திரத்தில் 1வது லேக்கம்தான் தாவா சொத்து. தாவா சொத்து லேலை என்றாலும் சம்பந்தமில்லா சொத்து பத்திரத்தைத்தான் தாவா சொத்தில் உரிமை கொண்டாடுகிறேன் என்றால் சரியல்ல. நத்தம் சீுவயில் வாதிகள் பெயருக்கு பட்டா கொடுக்கப்பட்டுள்ளது என்றால் சரி. பட்டாவை ஆட்சுபணை செய்து வருவாய்துறையில் மும்முறையீடு தாக்கல் செய்யவில்லை என்றால் சரிதான்.”

23. The learned Counsel for the plaintiff would mainly contend that since the suit property is a vacant land, there was no occasion or chance for issuing patta, but the plaintiff in collusion with the revenue authorities has fraudulently obtained Ex.A.3 patta and as such, the same cannot be relied on.



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24. As already pointed out, D.W.1 in his cross-examination would specifically admit that the plaintiff was granted patta during Natham Survey and he has not challenged the issuance of patta before the competent authorities. As already pointed out, in the Second Appeal he had taken a “U” turn and attempted to argue that the patta obtained by the plaintiff under Ex.A.3 is only an assignment patta, but this Court has already rejected his claim for additional evidence.

25. The learned Counsel appearing for the first defendant would rely on some decisions which were referred before the appellate Court. In the case of *S.Madasamy Thevar Vs. A.M.Arjuna Raja* reported in **2000-3-L.W.793**, the settled legal position has been reiterated that it is the duty of the plaintiff to prove his case and he cannot place any reliance on the loopholes in the case of the defendant and that the plaintiff cannot be allowed to succeed his case, taking advantage of the defects in the defendant's case.

26. In the case on hand, as already pointed out, though the plaintiff as well as the defendants have claimed ownership of the property, the



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plaintiff while producing the evidence to prove his case, can very well take a stand that the defendants have failed to prove their stand. As rightly contended by the learned Counsel for the plaintiff, the plaintiff has not relied on the weakness or the loopholes in the defendant's case.

27. The learned Counsel for the first defendant would rely on the decision reported in **1999(III) CTC 304 (Kammavar Sangam through its Secretary R.Krishnasamy Vs. Mani Janagarajan)**, wherein a learned Judge of this Court has specifically held that no reliance can be made on patta to prove title, as patta which mutates entries cannot convey or extinguish right over the property.

28. In the case on hand, as rightly observed by the learned appellate Judge, the plaintiff has not produced Ex.A.3 patta to prove his title to the suit property, but on the other hand, he has produced Ex.A.2 sale deed and to corroborate his case that he has been in possession and enjoyment of the property as owner thereof.

29. The learned Counsel would also rely on the decision in the case of **Subbiah and another Vs. Amaravathy and others** reported in



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AIR 2004 Mad.156, wherein it has been held that the plaintiff's right or title or possession cannot be decided based on the boundary recitals of sale deed of the defendant. As already pointed out, the plaintiff has produced Ex.A.2 sale deed and to confirm his case of purchase, he has relied on the boundary recitals of sale deeds in respect of the property situated on the south of the suit property. As rightly pointed out by the learned Counsel for the plaintiff, even in the sale deed of the first defendant, suit property has been shown as the northern boundary for the property purchased by the first defendant.

30. No doubt, as rightly pointed out by the learned Counsel for the first defendant, the learned appellate Judge in his judgment, has referred the entire findings recorded by the learned trial Judge for the issue No.1, but at the same time, the learned appellate Judge has also proceeded to discuss the points raised by the appellant and also referred the judgments relied on by the appellant's Counsel and recorded his findings. Hence, the way in which the judgment was passed by the appellate Court cannot be found fault with.

31. In ***S.Madasamy Thevar's decision*** above referred, this Court



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has held that under [Section 100](#), C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence and that the High Court ordinarily will not interfere with the concurrent findings of the Courts below or the findings of the first appellate Court which is the final Court of facts and the findings can be set aside on valid reasons as contemplated under law. It is pertinent to note that the appellant has not shown that any material evidence was ignored by the first appellate Court or that there was no evidence at all. It is not their case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously.

32. Considering the above, the trial Court as well as the appellate Court have rightly decided that the plaintiff has proved his case and as such, the plaintiff is entitled to get the reliefs claimed. Consequently, the Substantial Questions of Law are answered against the first defendant/appellant and in favour of the first respondent/plaintiff.



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33. In the result, the Second Appeal is dismissed. C.M.P.(MD)No. 9659 of 2023 is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

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NCC : Yes:No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Subordinate Court, Aruppukkottai.
2. The Additional District Munsif Court, Aruppukkottai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.388 of 2019

06.09.2024