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S.A.No.269 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.269 of 2020

R.Soundararaj

... Appellant

VS.

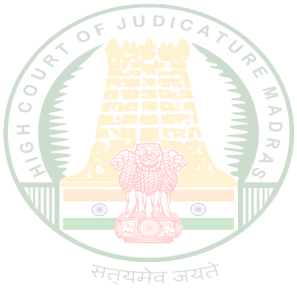
Velumani

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree order made in A.S.No.9 of 2016, dated 11.11.2019 on the file of the Subordinate Judge, Pollachi reversing the Judgment and Decree made in O.S.No.590 of 2007, dated 13.06.2016 on the file of District Munsif at Pollachi.

For Appellant : Mr.C.Veera Raghavan

For Respondents : Mr.N.Umapathi



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J U D G M E N T

The plaintiff is the appellant. He filed a suit for declaration of title and injunction in respect of suit 'A' schedule property and recovery of possession in respect of suit 'B' schedule property. The trial Court granted a decree for declaration and injunction in respect of suit 'A' schedule property and granted recovery of possession of 'B' schedule property. Aggrieved by the same, the 2nd defendant preferred an appeal in A.S.No.9 of 2016. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.

2. According to the plaintiff, the suit property was purchased by him under registered sale deed dated 22.03.1982 and he has been in possession and enjoyment of the same right from the date of purchase. The defendants are owning properties on the eastern and southern sides of the properties. Without having any manner of right over the suit property, the defendants have attempted to interfere with the plaintiff's possession. Therefore, the suit was initially laid for declaration of title and injunction.



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3. According to the plaintiff, pending the suit, the 2nd defendant committed trespass into the portion of the suit 'A' schedule property and hence the same has been described as 'B' schedule property and relief of recovery of possession was included in the plaint by way of amendment.

4. It is also seen from the typed set of papers that the suit was not pressed as against the defendants 1, 3 to 6 and the suit was proceeded only as against the 2nd defendant.

5. The 2nd defendant filed a written statement, denying the title of the plaintiff over the suit property. It was specific case of the 2nd defendant that the plaintiff's vendor had no title to convey the plaintiff.

6. It is also stated by the defendants that he has been in possession and enjoyment of the suit 'B' schedule property for more than four decades and the plaintiff has no title or possession over the same. Thus denying the title and possession of the plaintiff, the 2nd defendant sought for dismissal of the suit.



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7. Before the Trial Court, the plaintiff was examined as PW.1 and seven documents were marked as Exs.A1 to A7. The 2nd defendant was examined as DW.1, Village Administrative Officer was examined as DW.2 and Assistant Taluk Officer was examined as DW.3. On behalf of the defendants, nine documents were marked as Ex.B1 to B9. The Adangal extract for fasli year 1378 to 1383 was marked as Ex.X1.

8. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff established his right, title and possession of the suit property and granted a decree for declaration of title and injunction in respect of 'A' schedule property. The Trial Court also found that the plaintiff was entitled for recovery of possession of 'B' schedule property and decreed the suit as prayed for.

9. Aggrieved by the same, the defendants filed an appeal in A.S.No.9 of 2016, on the file of the Subordinate Judge, Pollachi. The First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.



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10. At the time of admission, this Court formulated the following substantial questions of law, by order dated 10.03.2020:

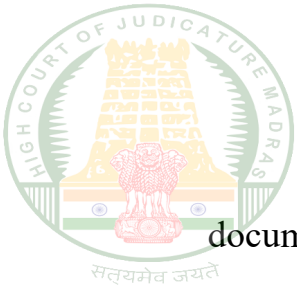
“ 1. Whether the lower appellate Court is correct to rejecting the sale deed of the appellant under Ex.A1 and patta under Ex.A2?

2. Whether the lower appellate Court is correct in reversing in the judgment on the basis that the respondent is in possession of property more than 45 years.

3. Whether the lower Appellate Court is right in concluding that the appellant has not proved the title of his vendors through revenue documents, more so, when the property in question is classified as gramanatham.

11. The learned counsel appearing for the appellant would submit that the plaintiff established his title over the suit property by producing Ex.A1-title deed and revenue document under Ex.A2 and the First Appellate Court committed serious error in not considering the same.

12. The learned counsel also submitted that the defendants claimed possession over ‘B’ schedule for four decades. They have not produced any



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documents to establish the same and hence the First Appellate Court committed an error in reversing the well considered judgment of the trial Court.

13. The learned counsel appearing for the respondent would submit that title of the vendor of the plaintiff was specifically denied by the defendants in the written statement. The plaintiff failed to produce any document to establish the title of his vendor. In such circumstances, the First Appellate Court was justified in reversing the findings of the Trial Court.

14. Ex.A1 is the sale deed in favour of the plaintiff executed by one Kanagaraj. Ex.A2 is a Revenue Chitta issued in the name of plaintiff for the suit property. Therefore, it is clear that the suit property was purchased by the plaintiff in the year 1982 and revenue document also stands in his name. The 1982 registered sale deed in favour of plaintiff cannot be ignored lightly.

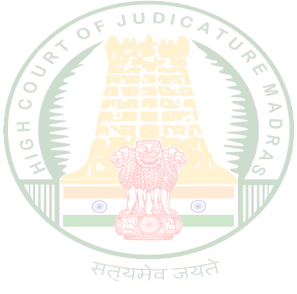
15. It is seen from endorsement made in the docket of Ex.A1 it was marked before the Court on 05.01.2015. When the document was tendered



in evidence before the Court, it was 30 years old document and hence the presumption available to old document can be pressed into service in favour of Ex.A1. The revenue document produced by plaintiff is complementary to Ex.A1. If Ex.A1 and A2 are taken into consideration, we can come to the conclusion that the plaintiff proved his title over the suit property. Even though the title of plaintiff's vendor was denied by the defendants in the written statement, when he was examined as DW.1, he categorically admitted that the plaintiff purchased 16 ½ cents of property and 2 cents of property purchased by him was acquired by the Government for the purpose of laying the road on the western side. He also clearly admitted after acquisition, the plaintiff is entitled to 14.40 cents and the revenue record also stands in the name of the plaintiff.

16. The relevant admission of DW.1 is extracted below:

தாவாசு ' சொத்தின் ' வாதி 16 1/2 சென்ட் ' விஸ்தீரணம் உள்ள இடத்தை கிரையம் பெற்றுள்ளார். தாவாசு சொத்துக்கு மேபுறம் தென்வடலாக ஒரு தடம் உள்ளது அந்த தடத்தில் 2 சென்ட் விஸ்தீரணம் உள்ள வாதிக்கு பாத்தியப்பட்ட இடத்தை அரசாங்கம் எடுத்துக்கொண்டனர் என்றால் சரிதான். ஆதலால் தாவாசு சொத்து தற்போது வாதிக்கு பாத்தியப்பட்ட விஸ்தீரண அளவு, 14.40 சென்ட் என்றால் சரிதான். தாவாசு சொத்துக்குரிய வருவாய்த்துறை ஆவணங்கள் வாதி செளந்தாராஜன் பெயரில் உள்ளது என்றால் சரிதான். வாதி செளந்தாராஜனுக்கு பந்தயப்பட்ட இடம் வருவாய்த்துறை



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ஆவணங்களின் படி சாஃவே எண்.568/14 என உட்பிரிவு செய்யப்பட்டது
என்றால் எனக்கு அதைப்பற்றி தெரியாது.

17. If Exs.A1 and A2 are taken into consideration, in the light of the admission made by DW.1, we can safely come to the conclusion that the plaintiff established his title over the suit property.

18. It is the specific case of the plaintiff that the defendants encroached the portion of suit 'A' schedule property and put up a construction there on. The portion allegedly encroached by the defendants is described as suit 'B' schedule property. Unless the properties of parties are measured with reference to the title deed and revenue documents, it may not be possible to come to the conclusion, whether the defendants have encroached any portion of the suit property. If the properties of plaintiff and the 2nd defendant are measured with reference to Ex.A1 and B1, the Court can safely come to the conclusion, whether there is an encroachment by the defendants in the property of the plaintiff. If the property assigned to 2nd defendant in Ex.B1 is identified by the Surveyor, the dispute between the plaintiff and defendants can be resolved by the Court. In fact Ex.B1, the defendants' title documents is anterior in time. In case of overlapping of



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properties purchased under Exs.A1 and B1, since B1 is anterior in time, the same will prevail over Ex.A1. Therefore, the measurement of the properties of plaintiff and defendants with reference to respective title deeds and revenue documents is absolutely necessary to resolve the dispute in this case.

19. The First Appellate Court without appreciating the admission of DW.1 and the legal effect of Ex.A1 came to the conclusion that the plaintiff failed to establish his title over the suit property. Therefore, the said finding is liable to be set aside.

20. Even if this Court comes to the conclusion that the plaintiff has established his title over the suit property, as Ex.B1, title document of defendant, is anterior in time, unless the properties covered by Ex.B1 are identified by proper surveying of the same, we cannot declare the title of plaintiff based on Ex.A1, which is the subsequent to Ex.B1. In such circumstances, this Court feels in order to have satisfactory resolution of the dispute between the plaintiff and defendants, the matter shall be remanded back to the Trial Court with direction to the trial Court to appoint a Advocate Commissioner to measure the properties of both the parties with reference to the title deeds and revenue documents.



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21. In the light of the discussion made earlier, the substantial questions of law framed at the time of admission are answered in favour of the appellant. The second appeal stands allowed by setting aside the judgment and decree passed by the Courts below. The matter stands remanded back to the trial Court with direction to the Trial Court to appoint an Advocate Commissioner to measure the properties of the plaintiff and 2nd defendant with reference to the title deeds and revenue documents. The Trial Court shall dispose of the suit based on the findings rendered by the Advocate Commissioner, after giving necessary opportunity to both the parties to lead further evidence, if any, found necessary. Since the original suit was of the year 2009, the Trial Court shall make every endeavour to dispose of the suit within a period of six months from the date of receipt of copy of this order. In the facts and circumstances of the case, there will be no order as to costs.

03.06.2026

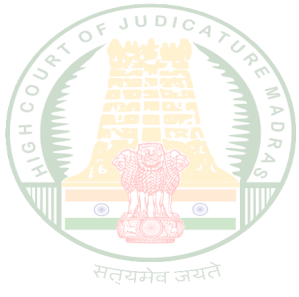
Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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- To
- 1.The Subordinate Judge, Pollachi.
 - 2.The District Munsif, Pollachi.



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S.SOUNTHAR, J.

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