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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2019

DELIVERED ON : 24.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD) No. 105 of 2009
and
C.M.P. (MD) No. 185 of 2017

N. Ganesan .. Appellant/Respondent/Plaintiff

Vs.

1. N. Rengasamy (Died)
2. Arivazhagan
3. Swaminathan
4. Ramarasu

... Respondents 1 to 4/Appellants/
Defendants

5. R. Manimaran ... Respondent No. 5

(R5 brought on record as the LR of deceased
first respondent vide Court order
dated 03.08.2016 made in M.P. (MD)
Nos. 1 to 3/2013 in SA (MD) No. 105/2009)

Prayer : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 14.03.2008 made in A.S. No. 94 of 2007 on the file of the Sub Court, Pudukkottai, reversing the Judgment and Decree dated 31.07.2006 made in O.S. No. 65 of 2005 on the file of the Principal District Munsif Court, Pudukkottai.

For Appellant : Mr. S. Veeranasamy

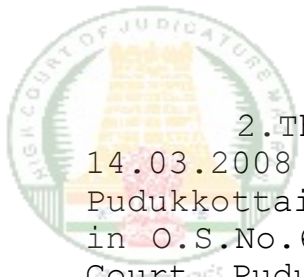
For Respondents 2 to 4 : Mr. R. P. Ramachanthiran

For Respondent No. 5 : No appearance

Respondent No. 1 : Died

JUDGMENT

Heard the learned counsel appearing for the appellant and the
<https://hcservices.ecourts.gov.in/hcservices/>
learned counsel appearing for the respondents 2 to 4.



2.This appeal is filed against the Judgment and Decree dated 14.03.2008 made in A.S.No.94 of 2007 on the file of the Sub Court, Pudukkottai, reversing the Judgment and Decree dated 31.07.2006 made in O.S.No.65 of 2005 on the file of the Principal District Munsif Court, Pudukkottai.

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3.The appellant was the plaintiff and the respondents 1 to 4 were the defendants in the suit. The fifth respondent was impleaded in the appeal as the legal heir of the deceased first defendant/first respondent herein. The appellants filed a suit for declaration and for injunction before the Principal District Munsif, Pudukkottai, in O.S.No.65 of 2005. The trial Court decreed the suit. Against which, the respondents 1 to 4 filed an appeal before the Sub Court, Pudukkottai in A.S.No.94 of 2007. The learned Sub Judge, Pudukkottai allowed the appeal in A.S.No.94 of 2007. Against which, the appellant/plaintiff filed this Second Appeal before this Court.

4.The case of the plaintiff is as follows:

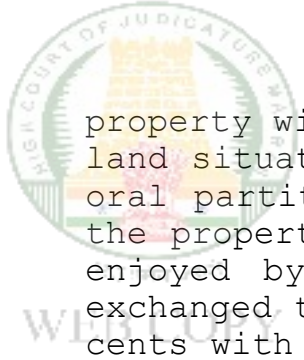
The suit property and other properties are the ancestral properties of the plaintiff. In the year 1968, there was a partition and as per the partition, 'E' schedule property was allotted to the share of the plaintiff. In the E schedule property, the second item of the suit property is mentioned as Morson punja land measuring an extent of 1 acre 10 cents and the third item of the suit property in S.F.No.107/5 on the North-Western corner to an extent of 70 cents totalling to 1 acre 80 cents were allotted to the share of the plaintiff. During the settlement period, joint patta was granted in the name of the plaintiff and his brothers.

5.The plaintiff was working as a Teacher. He was away from the village. The defendants 1 and 2 were supervising the land. But the agricultural works were done only by the plaintiff directly. The second defendant is the son of the first defendant and the first defendant married for the second time and settled in Orathanadu Taluk and the second defendant was supervising the land. In the U.D.R. scheme, patta was granted in the name of the first defendant for the entire extent of 5 acres 40 cents in S.F.No.107/5. Exploiting the mistake done during the U.D.R. scheme, the first and the second defendants colluded together and sold the property in favour of the third defendant, without the knowledge of the plaintiff. The fourth defendant is the father of the third defendant and the fourth defendant was working as a Village Administrative Officer in Gandharvakkottai for a quite long period. The second defendant was working in the panchayat under the President viz., Muthu, who was a relative of the fourth defendant. All the parties were denying the rights of the plaintiff, hence, the plaintiff filed the suit.

6.The case of the third defendant is as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

After the partition dated 17.07.1968, there was an oral partition between the brothers. The plaintiff exchanged the suit



property with the first defendant/Rengasamy and he obtained a vacant land situated in S.F.No.166/2 to an extent of 33 cents. As per the oral partition, the first defendant enjoyed the suit property and the property comprised in S.F.No.166/2 to an extent of 33 cents was enjoyed by the plaintiff for the past 37 years. The plaintiff exchanged the property situated in S.F.No.166/2 with an extent of 33 cents with one Singaram. Patta was granted in the name of the first defendant. The first and second defendants jointly executed a sale deed on 24.09.2004 in favour of the third defendant for a valuable consideration. The defendants were having adverse possession as the plaintiff was never in possession of the property and he was not entitled to claim the relief of declaration and for permanent injunction.

7.The brief substance of the written statement filed by the fourth defendant is as follows:

Originally the suit properties belonged to the third defendant and he obtained patta and was paying kist and only the third defendant was in possession and enjoyment of the property and the plaintiff was not entitled for the relief of declaration and injunction.

8.On the basis of the pleadings, the trial Court framed the following issues:

- (i)whether the plaintiff is entitled for the relief of declaration and injunction?
- (ii)to what other relief the plaintiff is entitled?

9.In the trial Court P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.3 were marked on the side of the plaintiff. D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.9 were marked on the side of the defendants. After considering the evidence and documents, the trial Court decreed the suit. Against which, the defendants 1 to 4 filed an appeal before the Sub Court, Aruppukkottai, in A.S.No.94 of 2007.

10.Before the lower Appellate Court, on the side of the defendants 1 to 4, it is stated that the trial Court failed to consider the oral exchange between the parties and that the trial Court has failed to consider that the plaintiff enjoyed Survey No.166/2 from the year 1968 onwards and prayed the decree to be set aside.

11.On the basis of the grounds of appeal the First Appellate Court framed the following issues:

- (i) whether the plaintiff is entitled for the relief of declaration and injunction?
- (ii) what are the relief available to the appellants?

12.After considering the arguments put forth by both the parties, the First Appellate Court allowed the appeal and set aside the decree passed by the District Munsif, Pudukkottai in O.S.No.65



of 25. Against that judgment, the appellants filed the Second Appeal.

13. In the grounds of Second Appeal, it is stated that the lower Appellate Court has failed to consider that the suit properties were partitioned in 1968 and were allotted to the appellant. The first Appellate Court is wrong in relying on the oral exchange pleaded by the respondents. The first Appellate Court failed to consider that the plaintiff has proved the title to the suit property and the admission of his title by the defendants. The first Appellate Court failed to consider that Ex.B.1/exchange deed was executed between the appellant and one Singaram, who was not a party to the litigation and the exchange deed was with regard to some other survey number and which was not related to the suit property.

14. The lower Appellate Court failed to consider that the patta proceedings and mutation of revenue records were the follow up actions only after the sale deed in favour of the third respondent/defendant. When the defendants specifically admitted the original title of the appellant and as the theory of oral exchange is not admissible in law, the lower Appellate Court ought to have decreed the suit and the oral exchange is against the provision of Section 17 of the Registration Act and the Second Appeal is to be allowed.

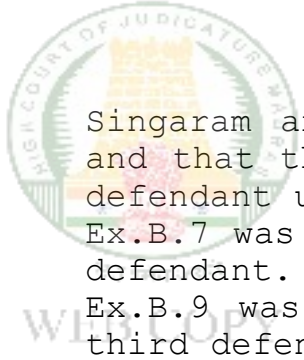
15. This Court by an order dated 18.02.2009 admitted the Second Appeal on the following substantial questions of law:

(i) whether the lower Appellate Court is correct in dismissing the suit accepting the plea of oral exchange?

(ii) whether the plea of oral exchange of immovable property worth of more than Rs.100/- is sustainable as against Section 17 of the Registration Act?"

16. On the side of the appellant, it is stated that in an oral partition in Survey No.107/5 out of a total extent of 5 acres 40 cents, 1 acre 80 cents was allotted to the plaintiff. Ex.A.1 was the partition deed, dated 17.07.1968. In the partition deed in schedule No.'E' second item and the third item situated in Survey No.107/5 with a total extent of 1 acre 80 cents was allotted to the plaintiff. Both the plaintiff and the defendants admitted that in survey No.107/5 out of the total extent of 5 acres 40 cents, 1 acre 80 cents was allotted to the share of the plaintiff, in item Nos.2 and 3 of 'E' schedule property, Ex.A.8 was the patta issued in the year 1978.

17. On the side of the respondents/defendants, it is stated that in Survey No.166/2 an extent of 33 cents house site was exchanged for the suit property and there was an oral exchange between the brothers and subsequent to that exchange, the first defendant was in enjoyment of the suit property. It is further stated that the plaintiff exchanged the above said 33 cents with one



Singaram and that Ex.B.1, was the exchange deed, dated 07.10.1998 and that the defendants 1 and 2 had sold the property to the third defendant under Ex.B.5 on 24.09.2004. Ex.B.6 was the patta transfer, Ex.B.7 was the patta issued by the Thasildar in favour of the third defendant. Ex.B.8 was the certified copy of the 'A' Register and Ex.B.9 was the Adangal extract for fasli 1414 in the name of the third defendant. It is stated that the possession of the defendants was admitted by the plaintiff and that in the evidence of P.W.1, it was admitted that the house site of 33 cents was more valuable than the 1 acre 80 cents of punja land and that Ex.A.2/patta and Ex.A3/kist receipt were not related to the suit property. D.W.2 and D.W.3 have deposed regarding the possession of the defendants on the basis of the oral partition. It is further stated that the suit property was filed for declaration of title and for injunction and the plaintiff was not in possession and hence, the suit itself is to be dismissed.

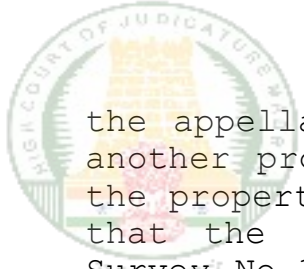
18.On the side of the respondents, it is stated that the appellant by way of an oral exchange, exchanged the suit properties with the first defendant to an extent of 33 cents in Survey No.166/2 and the property so exchanged was given in exchange for another property from Singam through Ex.B1. On the side of the appellant, it is stated that in the exchange deed, Ex.B1, Survey No.181/13 a property with an extent of 30 cents was exchanged for a property in Survey No.166/2 with an extent of 33 cents.

19.On the side of the appellant, it is stated that the alleged oral exchange of an immovable property is not possible under the Registration Act.

20.On the side of the respondents, it is stated that there was a joint patta in the name of Ganesan marked as Ex.A.2. On the side of the respondents, it is stated that the appellant has admitted the oral exchange in his cross-examination and that the appellant has not denied the oral exchange by way of reply statement and patta was the evidence to show that the respondents are in possession and the plaintiff was not in possession and the value of the lands exchanged were below Rs.100/- at that time and that no registration was necessary and that the respondents' title was perfected by way of adverse possession also.

21.On the side of the respondents, a judgment reported in 2009 (13) SCC 229 (L.N.Aswathama and another V. P.Prakash) and a judgment reported in 1993 Supp. (3) SCC 129 (Vinay Krishna V. Keshav Chandra and another) are cited.

22.Appellant has filed a Civil Miscellaneous Petition for accepting a document as an evidence. The case of the respondent is that the appellant orally exchanged the suit property for a land in Survey No.166/2 with the respondent and then the appellant further exchanged the property, he got through the exchange that is Suvey No.166/2 with one Singaram under Ex.B1. The appellant claimed that



the appellant did not exchange the suit property but had exchanged another property in Survey No.181/13 with the first respondent for the property in S.No.166/2 with an extent of 33 cents. It is stated that the second defendant sold the above exchanged property in Survey No.181/3 to a third party and that sale deed is a necessary document to be marked in this case. No valid reasons are stated against this document by the defendants. Hence, it is decided that the additional document is necessary to decide the issue and that the document is to be marked as Ex.A4.

23.It is seen that the first Appellate Court relied on Ex.B.1, exchange deed executed between the plaintiff and one Singaram. It is seen that the appellant had exchanged a property comprised in S.F.No.166/2 with an extent of 33 cents with one Singaram for a property in Survey No.181/13 with an extent of 30 cents.

24.By way of Civil Miscellaneous Petition, the appellant has filed an additional documents to be marked as Ex.A.4. It is stated that through Ex.A.4 son of the first defendant sold a property in Survey Nos.181/12 and 181/13. The case of the appellant is that the land with Survey No.181/13 was allotted to the plaintiff in the family partition and the plaintiff/appellant exchanged the land in Survey No.181/3 with Survey No.166/2 and then the plaintiff/appellant exchanged Survey No.166/2 with an extent of 33 cents under Ex.B.1, for an extent of 30 cents in Survey No.181/13.

25.A perusal of Ex.A.1 reveals that Survey No.181/13 was allotted to the share of the appellant. Suit property with an extent of 1 acre 80 cents was also allotted to the share of the plaintiff. The respondent claims that the suit property with an extent of 1 acre 80 cents punja land, was exchanged for survey No.166/2 which was also a punja land with an extent of 33 cents. No documents was filed by the defendants to show that the land in Survey No.166/2 was a house site. No prudent man will exchange 1 acre 80 cents of punja land, for another punja land with an extent of 33 cents. So the oral exchange claimed by the respondent is doubtful.

26.In the above circumstances, it is necessary that the appellant has to be given and opportunity to prove Ex.A4 by letting in oral evidence and of course the respondent must be given an opportunity to disprove the same. Hence, it is necessary that the appeal has to be remanded back to the lower Appellate Court for giving an opportunity for the appellant to let in oral evidence to substantiate the claim under Ex.A.4.

27.Hence, the Judgment and Decree dated 14.03.2008 made in A.S.No.94 of 2007 on the file of the Sub Court, Pudukkottai, is set aside and the matter is remanded back to the lower Appellate Court. The learned subordinate Judge, Pudukkottai is directed to allow both the parties to further examine the already examined witness and to



let in new evidence and to decide the appeal in A.S.No.94 of 2007 afresh.

28. With the above observations, this Second Appeal is allowed and the judgment and decree of the first Appellate Court is set aside. No costs. Consequently, connected Miscellaneous Petition is also allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Subordinate Judge,
Pudukkottai.

2. The Principal District Munsif Court,
Pudukkottai.

Copy to:

The Section Officer, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.P.RAMACHANTHIRAN, Advocate (SR-77326[F] dated 24/07/2019)

order made in
S.A. (MD) No.105 of 2009
24.07.2019

Ls

JMN(17.09.2019) 7P : 6C