



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.08.2021
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

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S.A. No.65 of 2007

Yesappa @ Chinnasamy ... Appellant/2nd Defendant
Vs

1.Ammaiamma
2.Duraisamy
3.Jayamma
4.Periyakka ... Respondents/Plaintiffs and
Defendants 10 to 12

PRAYER: Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree in A.S.No.24 of 2005 on the file of the Sub court, Hosur dated 23.12.2005 in confirming the judgment and decree in O.S.No.430 of 1985 on the file of the District Munsif Court, Hosur dated 30.03.2005.

For Appellant : Ms.Abirami
for Mr.V.Raghavachari
For Respondent 1 : Mr.S.Sivashanmugam
For Respondents 2 to 4 : No appearance

JUDGMENT
(Heard through video conferencing)

This second appeal has been filed challenging the concurrent findings of the courts below.

2. The Appellant is the second defendant in the suit O.S.No.430 of 1985 on the file of the District Munsif Court, Hosur. The suit was filed by the first respondent/plaintiff originally for declaration and injunction against the defendants 1 to 8.

3. For the sake of convenience, in the forthcoming paragraphs, the parties are referred to as per their litigative status in the suit.

4. It is the case of the plaintiff that she is the absolute owner of the suit schedule property having got the same under a



registered gift deed dated 07.03.1993 which has been marked as Ex.A1 before the trial court. However, the said contention has been disputed by the defendants as according to them, they are the owner of the suit property. The suit was decreed in favour of the plaintiff by the trial court on 29.08.1994. Aggrieved by the same, the defendants 1 and 2 preferred a regular appeal before the Sub Court, Hosur in A.S.No.57 of 1996. By judgment and decree dated 07.02.1997, the lower appellate court in A.S.No.57 of 1996 set aside the decree of the trial court and remanded the matter back to the trial court by appointing an advocate commissioner for fresh consideration.

5. Since during the pendency of the suit, after the remand order, passed by the lower appellate court, the plaintiff having been dispossessed, he was constrained to amend the relief sought for in the plaint by including the relief of possession which was allowed by the trial court. The first and sixth defendants died during the pendency of the suit and hence, the legal representative of the deceased sixth defendant was brought on record as the ninth defendant and the legal representatives of the deceased first defendant were brought on record as defendants 10 to 12.

6. After remand, the trial court considered the issue afresh and permitted the respective parties to adduce oral and documentary evidence. The Advocate commissioner appointed by the lower appellate court has also inspected the suit schedule property and also submitted his report which was also considered by the trial court. By judgment and decree dated 30.03.2005, the trial court once again decreed the suit O.S.No.430 of 1985 in favour of the plaintiff by granting the relief of declaration of title as well as possession in his favour. Aggrieved by the judgment and decree dated 30.03.2005 passed in O.S.No.430 of 1985 by the District Munsif Court, Hosur, the first defendant along with defendants 10 to 12 preferred a regular appeal before the Sub Court, Hosur in A.S.No.24 of 2005. The lower appellate court by its judgement and decree dated 23.12.2005 passed in A.S.No.24 of 2005 confirmed the findings of the trial court by dismissing the appeal. Aggrieved by the same, this second appeal has been filed by the second defendant.

7. This Court has also issued notice in the main second appeal, when it came up for admission in the year 2007 and till date, the second appeal has not been admitted.

8. The Appellant has raised the following substantial questions of law in the grounds of appeal filed before this Court:

"a. Whether the courts below are right in declaring the right of the plaintiff when he had



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not established to the extent as prayed for?

b. Whether the findings of the courts below are right in decreeing the suit when the plaintiff's vendor has not absolute right to the suit property?

c. Whether the courts below are right in upholding the claim of the plaintiff when neither right nor possession had been proved?

d. Whether the suit should not fail on account of the plaintiff failing to prove his absolute claim over the property?

e. Whether the suit as framed is maintainable in law?

f. Whether the suit is not bound to be rejected as the boundary recitals in the deed produced by the plaintiff and the suit property differs and the identity of the property had not been established?"

9. Learned counsel for the Appellant/second defendant would primarily submit that the suit is bound to be rejected as the boundary details in the gift deed marked as Ex.A1 produced by the plaintiff and the suit schedule property differs and the identity of the property has not been established. He drew the attention of this Court to the gift deed Ex.A1 as well as the suit schedule as well as the findings of the courts below and would submit that the burden is on the plaintiff to prove her case that she is the owner of the suit schedule property and having failed to prove the same through exhibits marked through her before the trial court, a perverse finding has been given by the courts below accepting the claim of the plaintiff.

10. However, the learned counsel for the Respondents after drawing the attention of this Court to the findings of the courts below would submit that the plaintiff has proved her case through the evidence placed on record that she is the absolute owner of the suit schedule property. In particular, he drew the attention of this Court to the oral evidence of the second defendant (DW1) before the trial court, wherein, he has admitted that 14 cents in which the disputed well is situated belongs to the plaintiff. He also drew the attention of this court to the findings of the courts below wherein it has been observed that the defendant has not filed any objection to the advocate commissioner's report which supports the case of the plaintiff. He would further submit that gift deed (Ex.A1) a registered document is of the year 1973 and till date, the said document has not been challenged before any court of law by the defendant and that being the case, he would submit that the defendant has no right to challenge the same in this proceeding.



Discussion:

11. Admittedly, the registered gift deed dated 07.03.1973 marked as Ex.A1 before the trial court which is the basis for the claim made by the plaintiff remains unchallenged till date. The lower appellate court in the impugned judgment has also taken into consideration the admission made by the second defendant (DW1) in his oral evidence that the disputed well is situated only in the property owned by the plaintiff. Survey number in which the disputed well is situated is found in Survey No.686/2. No documentary evidence has been produced by the second defendant before the trial court to prove that they are owning the lands in survey No.686/2.

12. Before the trial court, the plaintiff has filed six documents which were marked as Ex.A1 to Ex.A6 and two witnesses were examined on his side namely PW1 and PW2. On the side of the second defendant, two documents were filed which were marked as Ex.B1 to Ex.B2 and five witnesses were examined on his side namely DW1 to DW5. The trial court has also marked six documents as Court exhibits which includes, the advocate commissioner's report and the sketch.

13. None of the documentary evidence produced by the defendant before the trial court would prove that the second defendant is the owner of the suit schedule property. When all the documentary evidence placed on record infers that the plaintiff is the absolute owner of the suit schedule property, it is clear that the plaintiff has discharged his burden to prove her case as per the provisions of Section 101 of the Indian Evidence Act. Having discharged her burden, it is the responsibility of the second defendant to disprove the contention of the plaintiff which he has miserably failed before the courts below.

14. The Commissioner's report also which was marked as exhibits before the trial court also proves that the possession of the suit schedule property is with the plaintiff as held by the courts below. The issues raised before this Court by the Appellant/plaintiff are purely questions of fact which have been correctly and adequately considered by the courts below.

15. For the foregoing reasons, there is absolutely no substantial question of law involved in this second appeal. Accordingly, this second appeal is dismissed and the judgment and decree passed by the courts below are hereby confirmed. No costs.

Sd/-

Assistant Registrar(co)

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Sub Assistant Registrar



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To

1. The Subordinate Judge,
Sub court,
Hosur

2. The District Munsif,
Hosur.

+1cc to Mr.S.Shiva Shanmugam, Advocate SR.No. 37659

+1cc to Mr.V.Ragavachari, Advocate SR.No. 37639

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PMK (CO)

A.SK(28.09.2021)