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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.517 OF 2012
AND MP NO.1 OF 2012
AND CMP NOS.6033 & 10414 OF 2017

Thangavelu

... Appellant/
5th Defendant

Vs.

1.Allimuthu @ Ramakutti

... R1/Plaintiff

2.Panchamuthu

3.Masaiyan @ Pachiannan

4.Saminathan

5.Govindhan

... RR2 to 5/
Defendants 1 to 4

PRAYER:

The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.11.2011 made in A.S.No.24 of 2010 on the file of the Subordinate Judge, Mettur (Salem District) confirming the judgment and decree dated 06.10.2010 made in O.S.No.272 of 2007 on the file of the District Munsif Court, Mettur (Salem District).

For Appellant : Mr.T.Saikrishna

For Respondents : Mrs.Hema Sampath
Senior Counsel for Ms.R.Meenal



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J U D G M E N T

The unsuccessful fifth defendant has preferred the above Second Appeal against the concurrent findings of the Courts below.

2.For the sake of convenience, the parties are called with respect to their status in the Suit.

3.Originally, the first respondent/plaintiff filed a Suit for declaration and permanent injunction on the strength of the Sale Deed executed by his mother and sisters in respect of the property in S.No.42/1 measuring an extent of 0.73 Cents.

4.According to the plaintiff, the property originally owned by his grandfather one Ramasamy Gounder. He died 50 years back. The said Ramasamy Gounder had four sons namely, Marimuthu, Perumal, Venkatachalam and Dasan @ Karuppa Gounder. The property in S.No.42/1 measuring an extent of 3.08 acres was orally partitioned between the four sons of Ramasamy Gounder, in which the property in S.No.42/1A was allotted to one Dasan @ Karuppa Gounder, S.No.42/1B was allotted to one Perumal, S.No.42/1C was allotted to Marimuthu and S.No.42/1D was allotted to Venkatachalam.

5.After the demise of the plaintiff's father Venkatachalam, his mother and sisters executed a Sale Deed vide Ex.A5 dated 20.04.2007 in his favour. However, the fifth defendant got the Sale Deed executed from the grandchildren of Marimuthu, which included the properties in S.Nos.42/1C and 42/1D. Therefore, the plaintiff filed a Suit for declaration and injunction.

6.Defendants 1 to 4 have not contested the case.

7.The fifth defendant / appellant, who is the purchaser of the property in S.No.42/1D had vehemently contested the case. According to him, the plaintiff's grandfather owned an extent of 6.33 acres of land in M.Kallipatty Village, in which, the predecessors of his vendors, namely, Marimuthu was allotted with 1.53 acres and other three sons, namely, Perumal, Venkatachalam and Dasan @ Karuppa Gounder were allotted 1.60 acres. Patta Nos.623 and 808 pertaining to S.Nos.42/1C and 42/1D stands in the name of Marimuthu. Thus, the said Marimuthu owns the lands, which situated in S.Nos.42/1C and 42/1D, in total. On the basis



of their title, possession and enjoyment, they hypothecated the properties in S.Nos.42/1C and 42/1D and obtained loans from Banks. Pursuant to the waiver of loans ordered by the Government of Tamil Nadu, loans were cleared and the Loan Clearance Certificate was issued.

8.The plaintiff's father was allotted properties in new S.No.8/1A, measuring an extent of 0.48.5 Hectare, 8/1G measuring one acre, 8/4B measuring 9 Acres in M.Kallipatty Village and the patta number given to him was 813. Therefore, the case of the plaintiff, who was not at all aware of the oral partition, which happened 50 years before is without basis. Even at the time of oral partition, he was not even born.

9.On the other hand, by virtue of the admissions made in his evidence that he owns 1.10 acres of land other than the suit property by itself proves that the plaintiff has not come to the Court with clean hands and he suppressed material facts of possessing larger extent of land owned by his grandfather.

10.Furthermore, it is vehemently contended by the learned counsel for the appellant / fifth defendant that the plaintiff's father died intestate. His mother, himself and his sisters are the legal-heirs entitled to 1/5th share, whereas, strangely, the mother and sisters sold the entire extent of land in favour of the plaintiff, by way of Ex.A5. According to him, the Sale Deed itself is sham and nominal to defeat the rights of the fifth defendant. It is also contended that in normal circumstances, mother and sisters would execute only a release deed or settlement deed in favour of his siblings. The execution of the Sale Deed including the share of the purchaser is abnormal and it raises suspicion in the conduct of the parties. Therefore, a person, who approaches the Court with unclean hands without producing valid title is not entitled to the relief.

11.Further, an objection was raised as to the valuation of the property mentioned in the plaint. Even as per the case of the plaintiff, he purchased the property vide Ex.A5 by a registered sale deed valuing it at Rs.29,000/-, whereas, the plaint was valued at Rs.1,000/-. Therefore, the question of valuation being a pure question of law can be raised for the first time even before this Court in Second Appeal.

12.During the pendency of the appeal, the appellant has filed two petitions for receiving additional documents under



Order 41 Rule 27 CPC and the same are pending.

13. Heard the submissions made on either side.

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14. This Court admitted the Second Appeal on 23.08.2017 on the following substantial questions of law:-

"(1) Whether the courts below erred in law by giving findings by ignoring the material evidence adduced on the side of the appellant ?

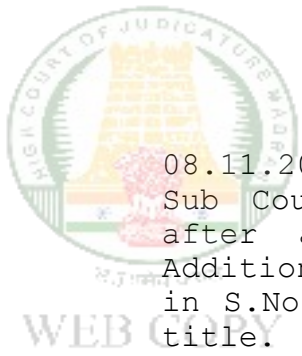
(2) Whether the courts below erred in law on the decision of the point that the 1st respondent / plaintiff has got the title and possession of the suit property ?

(3) Whether the courts below erred in law in relying upon Ex.A2 and A6 to hold that the 1st respondent / plaintiff has got the title and possession of the suit property?

(4) Whether the findings of the courts below that the 1st respondent / plaintiff has got absolute title and possession of the suit property is perverse?

(5) Whether the courts below erred in law in rejecting the evidence of Ex.B.1 to Ex.B.13 and the oral evidence of D.W.1 and D.W.2?"

15. It is imperative to advert to the miscellaneous petitions filed under Order 41 Rule 27 CPC for receiving additional documents. Additional document No.1 is the information given under the Right to Information Act. Additional document No.2 is the information with regard to the processing of application under Right to Information Act. Additional document No.3 pertains to the loan transaction of the fifth defendant with respect to his properties along with enclosures. Additional document No.4 pertains to Resolution No.310 dated 28.10.2002, in which, the properties in S.No.42/1D measuring an extent of 0.73 cents and property in S.No.42/1C measuring an extent of 0.80 cents in the name of one Ramasamy was shown as the owner. Additional document No.5 - certified copy of a Village Administrative Officer, which mentions S.No.42/1C falls in patta No.623 and S.No.42/1D falls in patta No.808 and both the pattas belonged to Ramasamy, vendor of the fifth defendant. Additional document Nos.6 and 7 pertains to loan document given by the Co-operative Society. Additional document No.8 is the loan card issued to one agriculturist which mentions the name of the member as Ramasamy and the ownership of lands in S.No.42/1B and 42/1C etc. Additional document Nos.9 and 10 are the orders dated



08.11.2011 in I.A.Nos.31/2011 in A.S.No.24/2010 passed by the Sub Court, Mettur, to show that the judgment was pronounced after a period of nine months in the above application. Additional document No.11 shows that the entire extent of lands in S.No.42/1 stood in the name of Marimuthu, the predecessor in title.

16.From the perusal of these additional documents, it is seen that the said Ramasamy availed loans from M.Kallipatty Primary Agricultural Co-operative Credit Society. Additional document No.4 mentions properties in S.Nos.42/1B and 42/1C. In respect of the property in S.No.42/1D, there are manipulations. It appears that S.No.18/1 was altered as 48/1D. This material alteration gives rise to serious doubts. Other than this, some other entries were made and lot of corrections were made. Therefore, this document cannot be relied on.

17.Additional document No.5 mentions S.No.42/1D falls in patta No.808. It is not in dispute that patta No.808 pertains to S.No.42/1D and that was proved before the Trial Court. Therefore, this document is also not necessary to be received. Receiving additional documents does not bring out a new fact which has not been furnished before the Trial Court. Additional document Nos.6 and 7 pertains to loan transactions. It is irrelevant to this present case.

18.In respect of additional document No.8, it is seen that S.No.42/1D measuring an extent of 0.73 cents is included in the agricultural loan application. Even though it is only an application, I can see that two entries at the top were erased and there is clear manipulation or alteration in entering S.No.42/1D and the measurement as 0.73 cents. It was overwritten above the original entries. This document also cannot be relied on as valid evidence. Therefore, these documents, which do not bring any new facts and which was not available at the time of trial, need not be received. In so far as additional document No.10 is concerned, it is an order passed under Order 41 Rule 27 CPC on 08.11.2011.

19.It is relevant to state that the application filed before the Lower Appellate Court for receiving the additional documents was disposed of along with the judgment in A.S.No.24 of 2010 on 08.11.2011. It cannot be construed as delay. The Lower Appellate Court has rightly considered the documents and since it is not necessary to receive it, while passing the judgment in the appeal, rejected it. Therefore, the additional document No.10



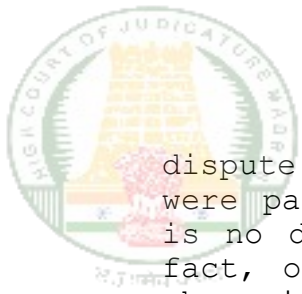
being a part of record of this case, need not be received at this stage. Therefore, this Court is of the opinion that the additional documents marked by the appellant, does not deserve to be received.

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20. In so far as the Second Appeal is concerned, the main contention of the appellant is that one Ramasamy Gounder owned more than 6.33 acres of land, out of which, 1.53 acres was allotted to his eldest son Marimuthu, 1.60 acres each to the other sons. On perusal of the materials placed before this Court, it could be seen that the earliest documents vide Ex.A1 is the document prepared on the basis of "A" Register of the year 1937, wherein it is shown that Ramasamy Gounder, forefather of the grandfather of the plaintiff and great grandfather of the fifth defendant's vendor - 3.08 acres. Ex.A2 which is a copy of the "A" Register dated 10.01.2009 clearly shows that S.No.42/1 was sub-divided into S.Nos.42/1A, 42/1B, 42/1C and 42/1D and patta numbers and respective names of the land holders, according to which, patta no.109 pertains to S.No.42/1A stands in the name of one P.Kannupaiyan, who is the son of Perumal, who is the second son of Ramasamy Gounder. Patta No.156 stands in the name of P.Krishnan, in respect of S.No.42/1B, who is also the second son of Perumal. Patta No.623 pertains to S.No.42/1C stands in the name of R.Marimuthu, predecessor of the vendor of the fifth defendant. Patta No.808 stands in the name of R.Venkatachalam, in respect of S.No.42/1D, who is the father of the plaintiff. The FMB marked vide Ex.A3 clearly demarcates all these sub-divisions. Thus, it is seen that the properties after sub-division stands in the name of the sons of Ramasamy Gounder.

21. The plaintiff's case is that these sub-divisions pertain to S.No.42/1 alone, whereas the defendants have taken a stand that the children of Ramasamy Gounder owned more than 3.08 acres of land and the said factum has been suppressed before this Court. According to the plaintiff, the plaintiff's father Venkatachalam was allotted property in S.No.8 under Patta No.813 in M.Kallipatty Village and he is not entitled to the property in S.No.42/1D. On the contrary, the sub-division and patta stands in the name of Venkatachalam in respect of S.No.42/1D in patta No.808. The fifth defendant had taken a stand that his predecessor, namely, Ramasamy Gounder is the owner of the property mentioned in Patta Nos.623 and 808 and he has not produced any documents with respect to patta Nos.623, 808 and 813.

22. From the materials produced before this Court, it is seen that both the parties admits that there was oral partition. The



dispute revolves around only to the extent of properties which were partitioned and allotment of property in S.No.42/1D. There is no dispute about the properties in S.No.42/1A and 42/1B. In fact, one of the sons namely, Dasan @ Karuppa Gounder sold his share in S.No.42/1A in favour of his brother one Perumal, who is the owner of the property in S.No.42/1B. Further, it is seen that the "A" Register discloses the name of P.Kannupaiyan in patta No.109 as owner of S.No.42/1A and P.Krishnan, in patta No.156 as owner of S.No.42/1B. These sale transactions proves that there was partition. It is also an admitted case that Marimuthu, the eldest son was allotted with property in S.No.42/1C. In that event, it is probable that the property in S.No.42/1D should have been allotted to one of the sons namely Venkatachalam, the plaintiff's father. There is no documents produced by the fifth defendant to prove that the said Venkatachalam was not allotted with any property in S.No.42/1 and that his entire share falls within S.No.8. There is no documentary evidence to show that in the oral partition, Venkatachalam did not derive any property under S.No.42/1.

23.On the contrary, it is categorically proved vide Re-survey Settlement Register, "A" Register and the patta issued in favour of Venkatachalam vide Ex.A6 that he is the owner of the property in S.No.42/1D measuring an extent of 0.73 cents. The Courts below have rightly discussed the issue. Once the oral partition is admitted by both the parties, the share allotted to them and their possession and enjoyment can be proved only through revenue records.

24.In the instant case, it is well proved that the plaintiff's father has derived title to the property in S.No.42/1D and it was substantiated by P.W.2, the brother of Venkatachalam, who is the beneficiary of the oral partition. Hence, the findings of the Courts below that pursuant to the oral partition that had happened in respect of the property, S.No.42/1D was allotted to Venkatachalam and it was conveyed to the plaintiff, whether the deed of conveyance in favour of the plaintiff by his mother and sisters, is proper or not, a valid title has been given to him. Once that finding is given, the declaration of title granted in favour of the plaintiff cannot be interfered.

25.For the foregoing discussions, it is noted that Exs.A2 and A6 proves the title and possession of the plaintiff and the findings by the Trial Court is correct and the questions of law are answered against the appellants.



26. In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Subordinate Judge
Subordinate Court
Mettur (Salem District).
2. The District Munsif
District Munsif Court
Mettur (Salem District).

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Ms.R.Meenal, Advocate, S.R.No.45794
+1cc to Mr.T.Saikrishna, Advocate, S.R.No.45592

SA NO.517 OF 2012

EV(CO)
PM/26/05/2022