



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 2.9.2021

Delivered on : 22 .10.2021.

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.502 of 2021

1. K.Meenakshi
2. K.Pandeeswari
3. K.Pandiaraja
4. K.Kannuthai

... Appellants/Appellants/Plaintiffs

vs.

K.Kannappan

... Respondent/ Respondent/Defendant

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 17.3.2021 passed in A.S.No.18 of 2020 on the file of the Sub Court, Thirumangalam confirming the Judgment and decree dated 24.2.2020 passed in O.S.No.839 of 2004 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.S.Muniyandi

JUDGMENT

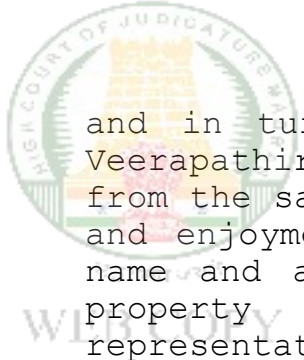
Challenging the concurrent finding of the courts below in declining to grant the relief of direction to the defendant to remove the encroachment in the suit property and permanent injunction, the present Second Appeal has been filed by plaintiffs.

2. The genealogical link between the parties to the proceedings is as under:-

One Veeran got three sons viz., Veeran, Veerabadran and Kannappan. The original plaintiff viz., Kannappan, son of Veerabadran, is no more and his legal representatives were brought on record as plaintiffs 1 to 4. The defendant Kannappan is the son of Kannappan (father), the third son of the above said Veeran. The dispute is between the descendants/grandchildren of the above said Veeran.

3. The case of the plaintiffs is as under:-

Originally, the suit property stood in the name of the defendant's father viz., Kannappan, who sold away the same to one Subba Reddiar, son of Kasthuri Reddiar by sale deed dated 10.5.1937



and in turn, in the year 1941, the original plaintiff's father Veerapathiran had purchased the same by sale deed dated 17.6.1941 from the said Subba Reddiar and from then, he had been in possession and enjoyment of the suit property by paying tax and kist in his name and after his demise, the plaintiff also lived in the suit property and accordingly, the plaintiff and his legal representatives trace title to the suit property. Whiles, the defendant had attempted to trespass into the suit property and hence, complaint was sought to be lodged against the defendant with the Police and with other Government authorities when the defendant had started construction work in the suit property and having no other option, had to file the present suit.

4. The case of the defendant is as under:-

The original plaintiff's father Veerapathiran, being elder son of the said Veeran was an illiterate and the defendant's father was an illiterate. The defendant's father went to Ceylon for eking out his livelihood and after earning sufficient income, he returned to India and managed the family properties. In the year 1937, there was a family debt in the name of the defendant's father and his brother Veerapathiran and to settle the same, a portion of the suit property was sold in favour of one Subba Reddiar on 10.5.1937 for Rs.50/-. The sale deed discloses the boundaries of the properties. The defendant's father again went to Ceylon and sent amount to the plaintiff's father Veerapathiran and accordingly, a portion which was sold in favour of Subba Reddiar was again purchased by the plaintiff's father Veerapathiran from the income of the defendant's father. The western boundary in the plaint schedule is absolutely wrong. In the partition, the A schedule property is allotted to the plaintiff's father and the B schedule property is allotted to the defendant's father equally towards the east west measurement is 18 ft and north south measurement is 32 ft. The defendant's father is entitled to eastern 18 ft x 32 ft and the plaintiff's father is entitled to 18 ft x 32 ft on the west. Thus, after partition, the plaintiff's father became the owner on the west of the defendant's father's property. The plaintiff's father's property on the west was kept as vacant and there was no mud house at all. The defendant's father had put up a house in his allotted portion and subsequently, the door No.52B is changed as 48. Since the mud house in the suit property was heavily damaged, a portion of the hut was demolished and that portion was newly put up by the defendant and his brothers by obtaining loan from the Government. The plaintiff is attempting to cause nuisance to the defendant's peaceful living in the house in the suit property by filing vexatious and false suit suppressing the real facts. The plaintiff's brother Ramasamy and the defendant's brothers Pakkianathan and Kirubanandham are also necessary parties to the suit and therefore, the suit is bad for non joinder of necessary parties and also misjoinder of parties and hence, the suit has to be dismissed.



5. On the above pleadings, the Trial Court had framed the following issues for determination:-

(i) Whether the plaintiffs are entitled to mandatory injunction as against the defendant?

(ii) Whether the plaintiffs are entitled to permanent injunction as against the defendant?

(iii) To what other relief, the parties are entitled?

6. During trial, four witnesses were examined on the side of the plaintiff and 11 documents were marked as Exs.A1 to A11 and on the side of the defendant, four witnesses were examined and 9 documents were marked. Apart from the above, three documents were marked at the instance of the court and four documents were marked as witness documents.

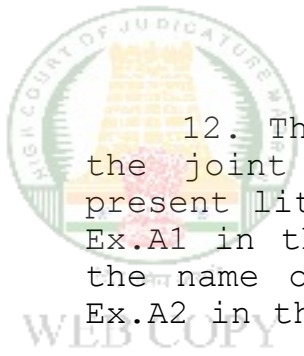
7. On analysis of the oral and documentary evidence, the Trial court had dismissed the suit as against which, the plaintiffs had preferred the first appeal.

8. In the first appeal, the plaintiffs had contended that the Trial Court has not properly appreciated the documentary evidence produced by the plaintiffs especially, Exs.A1 and A2 the sale deeds of the year 1937 and 1941 upon which the original plaintiff had traced his title whereas the defendant had produced only a patta which does not confer any title to the property.

9. The appellate court, after considering the plea of the plaintiffs, had dismissed the appeal by concurring with the finding of the Trial Court against which the present Second Appeal has been filed by the plaintiffs.

10. Learned counsel for the appellants/plaintiffs would submit that the courts below have failed to consider Ex.A1 viz., the sale deed dated 10.5.1937 executed by the defendant's father in favour of one Subba Reddiar and Ex.A2, the sale deed dated 17.6.1941 executed by the said Subba Reddiar in favour of the original plaintiff's father Veerabathiran. whereas the courts below have given much credence to the documents produced by the defendant viz., the unregistered partition deed, Ex.B8, patta Ex.B1 and the House Tax Receipt Ex.B2 and also the Commissioner's Report and Plan which cannot prevail over the sale deeds viz., Exs.A1 and A2 produced by the plaintiffs and thereby miserably failed to consider the same.

11. A perusal of the materials available on record in the light of the pleadings of the parties, it is seen that the plaintiffs claim their right and title to the suit properties through the sale deed Ex.A2 dated 17.6.1941 executed by Subba Reddiar in favour of Veerabathiran, father of the original plaintiff. But, the defendant claims that the suit property originally belonged to the joint family and on partition, he had acquired the same.



12. The admitted position is that the suit property was within the joint family of the brothers, one generation prior to the present litigants and it was sold to one Subba Reddy as evidenced by Ex.A1 in the year 1937 and after four years, it was transferred to the name of the father of the original plaintiff as evidenced by Ex.A2 in the year 1941.

13. The courts below have analysed the pleadings of the parties on the basis of the documentary evidence available on record and found that except the two sale deeds, the plaintiffs have not produced any other document to prove their exclusive title over the suit property but, the other documents filed by the defendant viz., the patta, property tax receipts and receipts for payment of electricity consumption charges reveal that the suit property was in joint possession of the brothers and five years thereafter, as evidenced by ExB8, there was a partition in the year 1946 which strengthens the case of the defendant that he had gone to Ceylon with regard to his occupation and from his earnings, the family property which had already been sold to Subba Reddiar to meet out the family expenses was purchased, but, it remained as joint family property till the partition deed was entered between the elders of the litigants.

14. The courts below have also appreciated the Report and plan filed by the Advocate Commissioner and found that there was some issue with regard to identification of the suit property and there are vast differences between the map produced by the plaintiffs as per Ex.A10 and the Report and Plan submitted by the Advocate Commissioner as Exs.C1 and C2 and in fact, the plaintiffs had encroached upon the some portion of the property that belongs to the defendant and there is no proper explanation for the same from the plaintiffs and the plaintiffs have also not filed any objection to the Advocate Commissioner's Report and Plan and thereby the courts below have rightly arrived at the conclusion that the plaintiffs are not entitled to the relief of injunction sought for by them.

15. This court does not find any infirmity or illegality in the findings arrived at by the courts below. In the opinion of this court, the Appellants have not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal



has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. Sub Judge,
Thirumangalam.
2. District Munsif Court,
Thirumangalam.

S.A. (MD) No.502 of 2021
22.10.2021.

RD/NS (24.11.2021) 5P 3C