



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.552 of 2008

1.Devamirtham

2.R.Rajendran

...Appellants

Vs.

G.Rajendran

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 25.01.2007 made in A.S.No.91 of 2006 on the file of the Court of the Additional Subordinate Judge of Virudhachalam, confirming the Judgement and Decree dated 19.04.2006 made in O.S.No.103 of 2001 on the file of the Court of the District Munsif – Cum – Judicial Magistrate, Virudhachalam.



For Appellants : Mr.R.Agilesh

For Respondent : Mr.J.Rajamohan

JUDGMENT

The defendants are the appellants before this Court challenging the concurrent Judgement and Decree passed in A.S.No.91 of 2006 on the file of the Additional Subordinate Court, Virudhachalam confirming the Judgement and Decree in O.S.No.103 of 2001 of the District Munsif – cum – Judicial Magistrate, Neyveli. The parties are referred to in the same rank as before the Trial Court. The facts in brief are as follows.

2. The plaintiff has filed a suit seeking declaration and injunction in respect of the property measuring an extent of 30 cents out of 77 cents in S.No.518/1 of Ammeri Village, Kammapuram, Chidambaram bounded on the north and east by the property of the 1st defendant, west



by pathway and south by Palanivelu's and plaintiff's land.

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3. It is the case of the plaintiff that the suit property was sold to him by one Palanivel son of Arumugam Chettiar for himself and as a guardian of his minor son under a sale deed dated 04.08.1998. The plaintiff would submit that he was put in possession of the property on the date of the sale. The defendants who had no right, title or interest to the suit property were attempting to trespass into the same by use of force. It is the case of the plaintiff that the defendants had gathered unruly elements and were taking steps to trespass into the property. Therefore, the suit came to be filed.

4. The defendants had filed a written statement inter alia denying the contents of the plaint and it is their case that on 31.07.1998 the 1st defendant had purchased the property from one Veerapa Chettiyar and his son Murugan under a sale agreement for a sum of Rs.7,500/-. An advance of Rs.500/- was paid and the balance was to be paid on 30.10.1998. The defendants would submit that the 1st defendant had



got the sale deed executed in his favour on 01.09.1998 and from the date of the purchase, he has been in possession and enjoyment of the suit property.

5. It is the contention of the defendants that the suit property belonged to Veerappa Chettiar and his son Murugan. The plaintiff had purchased the southern portion of S.No.518/1 and the 1st defendant had purchased the northern portion of S.No.518/1. The defendants never attempted to trespass over the property purchased by the plaintiff. The plaintiff wanted to purchase the entire extent of 77 cents and since the 1st defendant had purchased the 30 cents, the suit came to be filed. The 2nd defendant is having the property on the east of the property purchased by the 1st defendant and it was for this reason that the 1st defendant had purchased the property. The defendants would further submit that the suit property was not purchased by the plaintiff and it was only the 1st defendant who had purchased the suit property.



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6. The learned District Munsif – cum – Judicial Magistrate, Neyveli had framed the following issues:

“i. Whether the plaintiff is in possession and enjoyment of the suit property?

ii. Whether the 1st defendant is the owner of the suit property pursuant to the agreement of sale and subsequent sale deed dated 1.8.98?

iii. Whether the plaintiff is entitled to declaration, prayed for?

iv. Whether the plaintiff is entitled to permanent injunction prayed for?

iv. Whether the suit Property is properly described?

v. To what relief the plaintiff is entitled to?

7. The plaintiff has examined himself as P.W.1 and the vendor



Palanivelu as P.W.2 and one Venkatesan as P.W.3. Ex.A.1 to Ex.A.8 and Ex.X.1 and Ex.X.2 were marked on the side of the plaintiff. The 2nd defendant had examined himself as D.W.1 and his vendor Murugan as D.W.2. The defendants had marked Ex.B.1 and Ex.B.2 on their side.

8. During the evidence, the case was further developed. The parties had pleaded that there was partition between Arumugam, the father Palanivel and his brother Veerapan and each being entitled to 38.5 cents. The Trial Court went on to state that the defendants had not proved their title nor the plea of partition. The plaintiff had filed kist receipt and adangal to show his possession and therefore the suit was decreed in favour of the plaintiff.

9. Challenging the said Judgement and Decree, the defendants had filed A.S.No.91 of 2006 on the file of the Additional Subordinate Court, Virudhachalam. The learned Additional Subordinate Judge also confirmed the Judgement of the Trial Court and dismissed the appeal.



10. Challenging the same, the defendants are the appellants before this Court. The above Second Appeal is admitted on the following Substantial Questions of Law:

“1. Is the plaintiff entitled to succeed merely on the weakness of defendant's case even if any and is he not bounded to succeed only on the basis of his case?

2. Is the plaintiff entitled to succeed in a suit based on title even without plaintiff establishing plaintiff's predecessor's title?

11. The plaintiff has come forward with a case that the suit property belonged to Palanivelu and that he had purchased the same under a sale deed dated 04.08.1998. The plaintiff in his evidence has elaborated on the ownership of the property although in the plaint the same has not been mentioned. The plaintiff would submit that the property belonged to one Arumuga Chettiar and Ponnambala Chettiar. Ponnambala Chettiar had three sons, Selvaraj, Venkatesan and Murugan. Selvaraj had died. Arumugam had four sons, Muthusamy,



Nadanasababathy, Palanivel and Velayutham.

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12. In his evidence the plaintiff would further submit that the entire extent in S.No.518/1 was being enjoyed by Arumuga Chettiar. However, there is no explanation as to how the property had fallen to the share of Arumuga Chettiar and even assuming that the same had fallen to the share of Arumuga Chettiar, how Palanivel alone had got the right to the suit property despite the fact that he had three siblings who are also entitled to the property. The total extent in S.No.518/1 is 77 cents. Therefore, even going by the statement of the plaintiff, Palanivel would be entitled to an extent of 38.5 cents. Likewise, Arumuga Chettiar would be entitled to an extent of 38.5 cents. This extent has to be shared between Palanivel and his three brothers. Therefore, each of them would be entitled to extent of 9.62 cents. However, the plaintiff claims to have purchased 30 cents from Palanivel.

13. The Trial Court has failed to appreciate Ex.A.5, which is the



patta in respect of the suit property, which clearly describes the four persons as joint patta holders, namely, Veerapa chettiyar, Muthusamy, Selvaraj and Arumuga Chettiar. This patta has been issued on 04.06.2001. This would clearly show that the extent of 77 cents has not been partitioned and that the four persons are joint patta holders of the same. That being the case, it is not known as to how the plaintiff can claim an exclusive right to an extent of 30 cents.

14. The document that have been filed on the side of the plaintiff, namely, Ex.A.7 chitta would also show that the property belongs to Veerapa Chettiyar, Ponnambala Chettiyar and Arumuga Chettiyar. The Adangal extract filed as Ex.A.8 would also show that the property has been enjoyed by Arumuga Chettiyar and Selvaraj. The plaintiff's vendor Palanivelu is not shown to be in enjoyment of the property.

15. The plaintiff has not been able to prove as to how he is entitled to an extent of 30 cents exclusively though the revenue records show that there are other owners of the property. The plaintiff has not



taken any steps to seek a partition of the property. P.W.2 who has been examined on the side of the plaintiff who is the vendor of the plaintiff would state that he had three siblings. P.W.2 would depose that there was an oral partition. However, the plaint does not speak about any such partition and the same was introduced only during the evidence.

16. Therefore, the Courts below have committed a grave error in decreeing the suit on the basis of revenue documents totally overlooking the fact that these documents show joint patta, meaning joint ownership and does not show the plaintiff to be an exclusive owner of the larger extent of the suit property.

17. Both the Courts have found fault with the defendants stating that the defendants have not proved the case totally overlooking the fact that it is for the plaintiff to prove his case and the plaintiff cannot rest his case on the weakness of the defendants. The plaintiff has not been able to establish the title of his predecessors in title to the suit property. Therefore, the Substantial Questions of Law are answered



against the plaintiff.

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18. In the result, the Second Appeal is allowed. However, there shall be no order as to costs.

21.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Additional Subordinate Judge,
Virudhachalam.

2.The District Munsif – Cum –
Judicial Magistrate,
Virudhachalam.



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P.T. ASHA, J.

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