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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2022

DELIVERED ON : 30.03.2022

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.Nos.809 & 810 of 2008

1.Sivakumar

2.Chandran

...Appellants / Plaintiffs in S.A.No.809 of 2008

Saravanan

...Appellant / Defendant in S.A.No.810 of 2008

Vs.

Jeevanandam

... Respondent / Defendant in S.A.No.809 of 2008

Babu

... Respondent / Plaintiff in S.A.No.810 of 2008

Common Prayer : Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 24.10.2007 passed in A.S. Nos.112 & 111 of 2006, on the file of the Principal Subordinate Court, Thiruvannamalai, upholding the decree and judgment dated 31.10.2006 passed in O.S. Nos.218/1996 & 783/1994, on the file of the Additional District Munsif Court, Thiruvannamalai.

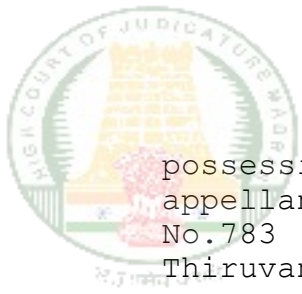
In both S.As:

For Appellants : Mr.V.Srikanth
for Mr.P.G.Thiyagu

For Respondents : Mr.B.Arvind Srevatsa
for Mr. T.V.Krishnamachari

COMMON JUDGMENT

The appellants in S.A. No.809 of 2008 are the plaintiffs 2 and 3 in O.S. No.218 of 1996 on the file of the Additional District Munsif, Thiruvannamalai. They filed the suit for declaration of their title to the suit property and for a consequential relief of permanent injunction restraining the defendant in the suit from interfering with their peaceful



possession and enjoyment of the suit property and for costs. The appellant in S.A. No.810 of 2008 is the second defendant in O.S. No.783 of 1994 on the file of the Additional District Munsif, Thiruvannamalai. The respondent/plaintiff filed the suit for a permanent injunction restraining the defendants in the suit from interfering with his peaceful possession and enjoyment of the suit property and for costs.

2. Both the suits in O.S. No.783 of 1994 and O.S. No.218 of 1996 were tried jointly by the learned District Munsif, Thiruvannamalai and the evidence was recorded in common in O.S. No.218 of 1996. The plaintiffs in O.S. No.218 of 1996 were called as plaintiffs. The defendant in O.S. No.218 of 1996 and the plaintiff in O.S. No.783 of 1994 are brothers and they were called as defendants in both the courts below.

3. For the sake of convenience, the parties are referred to as stated above and at appropriate places, their rank in the present appeals would also be indicated.

4. The case of the plaintiffs in O.S. No.218 of 1996 is briefly as follows:

The suit property is a house bearing Door No.27 in T.S. No.101/B9 of Thiruvannamalai District, measuring East-West 36 feet and North-South 60 feet within the boundaries stated in the plaint schedule. The plaintiffs in the suit claimed title to the suit property through a registered sale deed dated 20.01.1973 (Ex.A3) executed by one Nagammal in favour of Pachamuthu Gounder (father of the plaintiffs). Originally the suit was filed by one Lakshmi Ammal, wife of Pachamuthu Gounder, and since she died during the pendency of the suit, her grand sons were impleaded as plaintiffs as it is stated that Pachamuthu Gounder during his lifetime executed a Will dated 19.08.1977 (Ex.A4) in their favour. According to the plaintiffs, the suit property was assigned in favour of one Subban, by the District Collector, Thiruvannamalai on 22.10.1928 and that the said Subban constructed a house in the suit property. Subban had two sons by names, Adhimoolam and Ramakrishnan. The two sons of Subban filed a suit for declaration of title and recovery of possession of the suit property in O.S. No.537/1953 before the District Munsif, Thiruvannamalai against one Manicka Udaiyar, who, according to them occupied the suit property. The suit was decreed in their favour on 20.09.1954 (Ex.A21) and an Execution proceeding was also initiated in R.E.P. No.112/1955 and the possession of the suit property was delivered on 07.06.1955. Thereafter, Adhimoolam sold the suit property to Nagammal through a



registered sale deed dated 31.05.1956 (Ex.A1). Nagammal executed a mortgage deed in respect of the suit property on 30.03.1967 (Ex.A2) to one Savithriammal and it was later discharged by Nagammal. Nagammal and her husband sold the suit property in favour of Pachamuthu Gounder through a registered sale deed dated 20.01.1973 (Ex.A3). Pachamuthu Gounder executed a registered Will on 19.08.1977 (Ex.A4) in favour of the plaintiffs Siva Kumar and Chandran, and their mother Lakshmiammal was in possession of the suit property as a guardian for her minor children. They also paid municipal tax and property tax as evidenced by Ex.A5 to Ex.A9. In the meanwhile, one Jayaraman and Narayanan, who had no right/title over the suit property obtained patta fraudulently in their name and subsequently the said patta was cancelled by Tahsildhar, Thiruvannamalai, on 30.04.1994 (Ex.A10). According to the plaintiffs the defendant Jeevanandam is attempting to interfere with their possession and enjoyment of the suit property and therefore, they filed the suit for declaration of their title to the suit property and for a consequential relief of permanent injunction.

5. The suit was resisted by the defendant (Jeevanandam) on the following grounds:

- 1) The suit property was originally owned by Rajambal Ammal and she sold the suit property through a registered sale deed dated 23.12.1952 (Ex.B2) to one Andal Ammal, wife of Durairaju Mudaliar.
- 2) The said Andal Ammal during the year 1953 orally sold the suit property in favour of Ramamurthy, the father of the defendant who took possession of the suit property and permitted one Narayanan to reside in the suit property. However, the said Narayanan clandestinely obtained patta (Ex.B3) in his favour and therefore a mediation was held in the village in the presence of elders. As per the decision arrived at the mediation, the defendant purchased the suit property from the said Narayanan through a registered sale deed dated 16.03.1994 (Ex.B4).
- 3) The plaintiffs trace their title through Adhimoolam and the said Adhimoolam filed a suit in O.S. No.537/1953 before the District Munsif, Thiruvannamalai, for declaration and recovery of possession and the suit was decreed.
- 4) However, The suit property in O.S. No.537/1953 is entirely different from the present suit property.



5) Therefore, the sale deeds Ex.A1 and Ex.A3 would not confer any title upon Pachamuthu Gounder in respect of the suit property and consequently Pachamuthu Gounder cannot execute a Will (Ex.A4) in favour of the plaintiffs 2 and 3.

Therefore, he prayed for the dismissal of the suit.

6. The case of the plaintiff in O.S. No.783 of 1994 is briefly as follows:

One Mr. Ramamurthy, father of Babu and Jeevanandam (plaintiff in O.S. No.783 of 1994 and defendant in O.S. No.218 of 1996 respectively), purchased the suit property through a oral sale during the year 1994 and permitted one Narayanan to be in possession of the suit property. Since the said Narayanan fraudulently obtained patta in his name, a panchayat was convened in the village in the presence of elders and in order to purchase peace, Babu and Jeevanandam (the plaintiff in O.S. No.783/1994 and the defendant in O.S. No.218/1996) purchased the suit property through a sale deed dated 16.03.1994 (Ex.B4) from the said Narayanan. According to them, they are in possession and enjoyment of the suit property and therefore, the plaintiff in O.S. No.793/1994 prayed for a permanent injunction restraining the defendants Lakshmi Ammal (since deceased) and her son Saravanan from interfering with his peaceful possession and enjoyment of the suit property.

7. The defendants in the suit had taken the same plea as found in the plaint in O.S. No.218 of 1996.

8. The trial court, as already observed, tried both the suits jointly and framed appropriate issues in both the suits. After full contest, the trial court dismissed the suit in O.S. No.218 of 1996 and decreed the suit in O.S. No.783 of 1994 vide its decree and judgment dated 31.10.2006 on the following grounds.

- 1) The description of boundaries found in the sale deed Ex.A1 does not tally with the description of boundaries found in the Will Ex.A4 and the sale deed Ex.A3.
- 2) The description of boundaries and Survey Numbers mentioned in the sale deed Ex.A1 do not also tally with the suit property in O.S. No.537/1953 (Ex.A21).
- 3) The property sold in favour of the defendants through Ex.B4 is altogether a different property.
- 4) The plaintiffs failed to establish that the present suit property was the subject matter of the suit in O.S.



No.537/1953 on the file of the District Munsif, Thiruvannamalai.

- 5) The house tax receipts filed on the side of the plaintiffs were all of the year 1991 and no house tax receipts subsequent to the year 1991 were filed.
- 6) The plaintiffs failed to prove that Ex.A10 order (change of patta) was passed by Tahsildar, Thiruvannamalai, after conducting due enquiry.
- 7) The plaintiffs have not filed the extract of 'A' Register or the Settlement Register to show that Survey Number 101/15 was subsequently subdivided as Survey Number 101/B9.
- 8) The decree in O.S. No.785/1994 obtained by Chinnadurai is not useful to the case of the plaintiffs since the decree was a collusive one and the suit property in that suit was the western half of 4508 sq.ft, while the present suit property is eastern half of 4508 sq. ft..
- 9) The plaintiffs failed to establish their title and possession over the suit property and on the contrary the defendants proved their possession over the suit property.

9. Aggrieved over the same, first appeals in A.S. Nos. 111 and 112 of 1996 were filed before the Principal Subordinate Court, Thiruvannamalai. The learned Principal Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 24.10.2007.

10. Now these present appeals are filed by the plaintiffs. Notice of motion was ordered to the respondents and after several adjournments, these appeals were posted on 18.03.2022 for hearing. In the Memorandum of grounds of appeal, the appellants have raised the following substantial questions of law.

"1) When the recitals in Ex.A1 clearly refer to the boundary description of the plaint coupled with the defendant's admission that the boundary description in the earlier suit in O.S. No.537/53 and in the present suit are one and the same, still the courts below right in dismissing the suit?

2) When Ex.A.23 clearly goes to show that the alleged vendor of the defendant had no right to the suit property coupled with the fact that the defendant himself had admitted that no evidence to prove the possession of his father, still are the courts below right in granting a decree in favour of the defendant?



3) Whether the suit, without seeking declaration of title is maintainable especially when the defendants in O.S. No.218 of 1996 have disputed the title of the plaintiffs O.S. No.218 of 1996?"

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11. Heard Mr.V.Srikanth for Mr.P.G.Thiyagu, learned counsel for the appellants and Mr.B.Arvind Srevatsa for Mr.T.V.Krishnamachari, learned counsel for the respondents.

12. Mr. V. Srikanth, learned counsel for the appellants contended that though it is clearly mentioned that the suit property is the eastern side of 4408 sq. ft. in Survey No.101/B9 (old Survey No.101/15), both the courts below had wrongly held that the plaintiffs failed to prove that Survey No.101/B9 and Survey No.101/15 are one and the same. It is also contended that both the courts below did not take into consideration the order passed in E.A. No.1727/1973 in O.S. No.191 of 1961 (Ex.A.23), and that Andalammal could not get possession of the property through court from Rajambal Ammal even though the suit in O.S. No.191/1961 was decreed and the property described in the suit bears Door No.75 in T.S. No.101/B9. It is his contention that the defendants have taken two different pleas that (a) their father purchased the suit property through an oral sale during the year 1953 and (b) they purchased the suit property from Narayanan during the year 1994. Relying on the decision in Karam Kapahi and others vs. Lal chand Public Charitable Trust and another reported in (2010) 4 SCC 753, the counsel for the appellants contended that the defendants cannot approbate and reprobate at the same time. He also relied on the following decisions in

- 1) Thulasidhara and another vs. Narayanappa and others reported in (2019) 6 SCC 409.
- 2) Jarnail Singh and another vs. Bhagwanti (dead) through legal representative and others reported in (2019) 17 SCC 704.
- 3) K.N. Nagarajappa and others vs. H. Narasimha Reddy reported in (2021) SCC 694.

and contended that there is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated. According to him, the first appellate court did not frame appropriate points for determination as is provided under Order XLI Rule 31 CPC and therefore, the finding of the first appellate court is liable to be set aside. Reliance was placed on the following rulings in this regard.

- 1) H. Siddiqui (dead) by LRS vs. A. Ramalingam reported in (2011) 4 SCC 240.



- 2) K. Karuppuraj vs. M. Ganesan reported in (2021) 10 SCC 777.
- 3) Malluru Mallappa (dead) through legal representative vs. Kuruvathappa and others reported in (2020) 4 SCC 313.

13. Per contra, Mr.B.Arvind Srevatsa, learned counsel for the respondents raised the following contentions:

- 1) The plaintiffs trace their title to the suit property in O.S. No.218 of 1996 vide the sale deed dated 31.05.1956 (Ex.A1). However, the plaintiffs did not mark the original sale deed before the Court.
- 2) The plaintiffs did not produce any Revenue Records to show that the Survey No.101/15 (the suit property in O.S. No.537/1953) and the Survey Number 101/B9 (present suit property) are one and the same.
- 3) The description of boundaries also differs in the sale deeds dated 31.05.1956 (Ex.A1) and 20.01.1973 (Ex.A3) and the decree passed in O.S. No.537/1953 (Ex.A21).
- 4) In the sale deed dated 23.12.1952 executed by Rajambal Ammal in favour of Andal Ammal, the property conveyed is described as the property situate in Survey No.101/B9, whereas in Ex.A21, the property is described as Survey No.101/15.
- 5) Since both the courts below had rendered a finding based on oral and documentary evidence adduced on both sides, the present second appeal cannot be sustained as per the provisions of Section 100 CPC.

The learned counsel for the respondents also relied on the following decisions in

- 1) Ramathal vs. Maruthathal & Ors reported in (2018) 18 SCC 303.
- 2) Naresh & Ors vs. Hemant & Ors (Civil Appeal No.8859 of 2019 dated 19.11.2019

and contended that unless there are substantial questions of law involved, the second appeal cannot be allowed.

14. The appellants, in order to establish their title over the suit property relied on the Will dated 19.08.1977 (Ex.A4) executed in their favour by their father Pachamuthu Gounder. The contention of the plaintiffs is that the suit property was assigned in favour of one Subban, father of Adhimoolam by the District Collector of Thiruvannamali on 22.10.1928. A copy of the said assignment order has not been filed before the courts below. According to the appellants, Adhimoolam, the vendor of Nagammal filed a suit in O.S. No.537/1953 before the District Munsif, Thiruvannamali in respect of the property bearing Door No.100 in Survey No.101/15 of Thiruvannamalai Town for a declaration of his title and for recovery of possession and the said suit was decreed. A copy of the decree is marked as Ex.A21 and Suit Register extract is marked as Ex. B1. According to



the plaintiffs, the property, the subject matter of the suit in O.S. No.537/1953 and the present suit property are one and the same. However, a careful analysis of both the suit properties shows that the survey numbers and description of the boundaries are totally different. As rightly held by both the courts below, the plaintiffs did not adduce the Settlement Register or any other Revenue Records to show that Survey Number 101/15 and Survey Number 101/B9 are one and the same. In fact, the first appellate court had analysed threadbare the boundary descriptions in Ex.A1, Ex.A2, Ex.A3, Ex.A21 and Ex.B2 and had come to a definite conclusion that there is discrepancy in the description of the suit property as well as the parent documents of title filed by the plaintiff. To show some clarity on this aspect, the observations of the first appellate court is extracted hereunder.

"Let us analyse the boundaries also. In Ex.A1, the property was described as on the north of server Sahib's alienated Jaga. But in fact the suit property is lying on the north of a street. The learned counsel argued that the area was newly formed housing area, the street itself has been set apart for street by server Sahib himself. Hence, the Jaga refers to the New Muslim street. The said argument appears to be probable, but we have to consider the other piece of sale deed, dated 23.12.1952. Without relying the said document for the purpose of deciding title, the recitals in the document have some relevance. In the description of property, it has been categorically stated :

'Pudu Thulukka Theru'

Ex.B2 is dated 23.12.1952, so it is evident even in the year 1954 there was a street with the name of Pudu Thulukka Theru. Considering that the arguments advanced by the appellant's counsel to set aright. Mis-description of solution boundary of the suit property in Ex.A1 is not convincing and acceptable. Further in Ex.A21, the property has been described as:-

'வீதியில் மேற்புற வாயில் ரோட்டிற்கு "

Whether the said refers to Polur Road or the street is not known coming to the Ex.A2 mortgage deed in favour of Savithiri Ammal executed by Nagammal, the property has been described as:

'போளூர் ரோடு புது தெருவில் "

It is of the year 1967, nothing has been mentioned as 'Pudu Thulukka Theru' in the said document. In Ex.A3, for the very first time Pudu Thulukka Theru was



incorporated in the description of property. So, again the burden is upon the plaintiff to prove that the Pudu Theru and Pudu Thulukka Theru are one and the same.

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15. The contention of the learned counsel for the appellants is that the suit property was originally 101/B9 and it was later identified as 101/15 and it is the eastern portion of total extent of 4408 sq. ft. This argument of the counsel for the appellants cannot be accepted for the simple reason that this Court cannot presume that Survey No.101/B9 and Survey No.101/15 are one and the same in the absence of specific pleading and proof thereon. Another contention of the counsel for the appellants is that the defendants claim title through Andal Ammal and also through a sale deed dated 16.03.1994 executed by Narayanan in their favour. No doubt it is true that the defendants also claim title through Anadal Ammal. However, a suit was filed in O.S. No.191/1961 by Andal Ammal against Rajambal Ammal in respect of the suit property. Though the said suit was decreed, Andal Ammal could not get possession of the suit property through the Court from Rajambal Ammal as is seen from the orders passed in E.A. No.1727/1973 in O.S. No.191/1961 on the file of the District Munsif, Thiruvannamalai (Ex.A23). The specific case of the defendants is that their father purchased the suit property from Andal Ammal through an oral sale and that they put one Narayanan in possession of the suit property. It is their further contention that the said Narayanan obtained patta in his name and thereafter the defendants were forced to purchase the suit property from the said Narayanan through a registered sale deed dated 16.03.1994 (Ex.B4). Thus it is clear that the defendants are now claiming their title not under Rajambal Ammal, but from Narayanan. Though patta is not a document of title, even according to the plaintiffs the suit property was assigned in favour of one Subban. Though this is not proved by way of adducing acceptable evidence, it is found that the suit property was originally a Government land. The patta in favour of Narayanan, as rightly observed by the first appellate court, is found to be genuine.

16. The plaintiffs also could not prove their possession over the suit property by adducing acceptable evidence and both the courts below had analysed each and every document adduced on the side of the plaintiffs and had come to a conclusion that the plaintiffs have not proved their possession over the suit property. In any event, the plaintiffs having filed the suit for declaration of title to the suit property, have to prove their title by adducing acceptable oral and documentary evidence and they cannot pick holes in the title of the defendants and on that score seek a decree in their favour.



17. It is also seen that the patta was granted in favour of Narayanan on 13.08.1970 (Ex.B3) and according to the appellants, this patta was cancelled subsequently by Tahsildar, Thiruvannamali vide his proceedings dated 30.04.1994 (Ex.A10). A perusal of Ex.A10 shows that the patta in the name of Narayanan was cancelled. However, there is nothing to show in Ex.A10 that the said cancellation of patta was preceded by proper enquiry.

18. In the decision in Ramathal vs. Maruthathal & Ors cited supra, it has been held that,

"Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible; in such circumstances the High Courts should restrain itself from exercising the jurisdiction on a question of fact."

In the case of Naresh & Ors vs. Hemant & Ors cited supra, it has been held that,

"12. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

"13. In Madamanchi Ramappa vs. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

"12. ...The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the



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sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

14. Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur and others vs. Kaki and others, (2007) 1 SCC 546, holding as follows:

"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has



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been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law."

Since in the instant case, both the courts below had rendered a concurrent finding based on oral and documentary evidence, this Court is not inclined to interfere with the same, especially when the findings recorded by both the courts below cannot be said to be perverse.

19. In the result,

i. the second appeals are dismissed. No costs.'

ii. The decree and judgment dated 24.10.2007 passed in A.S. Nos. 112 & 111 of 2006, on the file of the learned Principal Subordinate Court, Thiruvannamalai, and the decree and judgment dated 31.10.2006 passed in O.S. Nos. 218/1996 & 783/1994, on the file of the learned Additional District Munsif Court, Thiruvannamalai, are upheld.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge,
Thiruvannamalai.
2. The Additional District Munsif,
Thiruvannamalai.



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

+1cc to Mr.P.G.Thiyagu,Advocate Sr.No.21224

+2ccs to Mr.C.Jagadish,Advocate Sr.No.21631

S.A.Nos.809 & 810 of 2008

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