



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022

PRONOUNCED ON : 27.01.2022

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CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1207 of 2010

T.Muthulakshmi

...Appellant/2nd Plaintiff

Vs.

1. State of Government of Tamilnadu,
Rep. By its District Collector,
Erode District, Erode.

2. The Tahsildar,
Erode Taluk Office, Erode.

3. The Executive Officer,
Surampatti Town Panchayat,
Surampatti, Erode.

4. The Assistant Director,
Department of Sericulture, Erode-9.

...Respondents/Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 26.02.2010 made in A.S.No.63 of 2009 on the file of the learned Principal Subordinate Judge, Erode, confirming the judgment and decree dated 31.07.2009 made in O.S.No.68 of 2005 on the file of the First Additional District Munsif, Erode.

For Appellant : Mr.J.James
for Mr.T.Arulraj

For Respondents : Mr.P.Harish[for R1 to R4]
Government Advocate

J U D G M E N T

The Second Appeal is focused as against the judgment and decree dated 26.02.2010 passed in A.S.No.63 of 2009 by the learned Principal Subordinate Judge, Erode, confirming the judgment and decree dated 31.07.2009, made in O.S.No.68 of 2005 by the learned First Additional District Munsif, Erode. The suit is for declaration, injunction and for costs.



2. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

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3. The laconic averments made in the plaint, are as follows:

(i) The 2nd plaintiff is the sole daughter of the 1st plaintiff (now deceased). The suit properties originally belonged to one Karuppa Naicker by virtue of a registered sale deed dated 13.08.1938. The said Karuppa Naicker sold the properties in favour of the 1st plaintiff, by virtue of a registered sale deed dated 10.02.1956. The description of the property, which was mentioned in the sale deed is as follows:

1. 3 Anganam house measuring about 1800 Sq.feet.
2. 2 ½ Anganam measuring about 1500 Sq.feet
3. 30 x 30 Sq.feet measuring 900 feet.

(ii) The total property covered under the sale deed is 4200 Sq.feet, in which the plaintiffs, after dividing the same, prepared a plan and then sold some of the properties in the name of various persons. The remaining extent is separately shown as 'B' item and the plaintiffs took separate possession of an extent of 28x32 sq.feet i.e. about 896 Sq. feet. The properties already sold is shown as 'A' schedule and the same is situated on the Southern side in the suit plan. The said plan is produced herewith. The properties already sold by the plaintiffs, are narrated as under.

1	On 20.02.1997 in favour of one Balasubramaniam	1009.5 Sq.feet
2	On 20.02.1997 in favour of one Madeswaran	900.0 Sq.feet
3	On 20.02.1997 in favour of one Arumugam	813.0 Sq.feet
		2722.5 Sq.feet
	Total extent of common pathway	589.5 Sq.feet
	Total	3312.5 Sq.feet
	Therefore the total extent purchased by the 1 st plaintiff is	4200.00 Sq.feet
	Total extent sold with common pathway	3312.00 Sq.feet
	Remaining extent	888.00 Sq.feet



(iii) Though the plaintiffs have clearly divided the properties with plan as stated above and took possession of a specific extent of 888 sq.feet, which is now the subject matter of the present suit, the 3rd defendant without any manner of right, attempted to alienate the suit properties to third parties, as if the properties belonged to the Panchayat Board. The 1st defendant is the superior authority to defendants 2 and 3. The plaintiff issued a legal notice on 05.11.2002 under Section 80(2) of CPC and the same was acknowledged by the defendants.

(iv) In earlier period, there was a house in the suit property and now the same is in a dilapidated condition. The plaintiffs have already entered into a sale agreement in respect of the 'A' Schedule i.e., the properties sold to the third parties by virtue of sale deeds dated 20.02.1997. Since the defendants already attempted to alienate the property as if it belonged to the Government, there is a cloud over the title created by the defendants.

(v) The plea of the defendants is that the suit property and the adjoining land has already been allotted to the 4th defendant and afterwards, he has taken possession of the same on 31.05.1991. The patta stands in the name of the 4th defendant in respect to R.S.No.154/9 is not tenable. The suit property is lying only as a vacant land and it is only in the possession of the plaintiffs. Hence, the present suit has been filed for the relief of declaration and consequential permanent injunction.

4. The averments found in the written statement filed by the 3rd defendant, are as follows:

(i) It is incorrect to say that the suit properties originally belonged to one Karuppa Naicker and the said Karuppa Naicker sold the property in favour of the 1st plaintiff. It is incorrect to say that as of now, the plaintiffs are in the possession of 896 sq.ft. The plaintiffs are not the absolute owners of the suit properties and they have never been in possession and enjoyment of the suit property at any point of time. The documents produced by the plaintiffs are self serving documents and the story put forth by the plaintiffs are concocted and they are created for the purpose of filing this vexatious suit.

(ii) Since the plaintiffs had never been in possession and enjoyment over the suit property, they are not entitled to the relief of declaration as well as permanent injunction.



There is no scrap of paper that the plaintiffs are having the suit property and they are in possession and enjoyment over the suit properties. The house tax receipts produced by the plaintiffs does not belongs to the suit property. The plaintiffs have come to the Court with unclean hands. The suit property belongs to the Government. Hence, the suit filed by the plaintiffs, is liable for dismissal.

5. The averments found in the written statement filed by the 4th defendant, are as follows:

(i) The suit properties and other properties were allotted by the Government in favour of the 4th defendant on 31.05.1991. From the date of allotment, the property is in the possession of the 4th defendant. The pattat has also been in the name of the 4th defendant. The documents relied on by the plaintiffs, are only in respect to the land measuring an extent of 1800 sq.ft., whereas, the plaintiffs have sold 3312 sq.ft of land and there is no clarification, as to how the plaintiffs acquired 2400 sq. ft of land. The plaintiffs have sold the property without any title and there is no cause of action. Hence, the suit filed by the plaintiffs is liable for dismissal.

6. Based on the above said averments, the trial Court framed necessary issues and tried the suit. On the side of the plaintiffs, three witnesses were examined as PW1 to PW3 and twenty-three documents were marked as Ex.A1 to Ex.A23. On the side of the defendants, two witnesses were examined as DW1 and DW2 and eight documents were marked as Ex.B1 to Ex.B8.

7. Having considered the materials placed before her, the learned 1st Additional District Munsif, Erode, came to the conclusion that the plaintiffs have not proved their case. In the appeal filed by the 2nd plaintiff, the learned Subordinate Judge, Erode, confirmed the findings arrived at by the trial Court and dismissed the appeal.

8. Feeling aggrieved over the findings arrived at by the Courts below, the 2nd plaintiff has filed the present Second Appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether both the Courts below have misread the documentary evidence and also oral evidence in dismissing the case of the plaintiff?

2. Whether the Courts below are in any event should have held that the plaintiff has prescribed title to the suit property by adverse possession,



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even if the Ex.A2, Sale Deed does not contain the entire property?

3. In any event, whether the Courts below should have decreed the suit for the extent of 888 sq.ft. claimed by the plaintiff as contained in the Ex.A2 Sale Deed?"

9. Heard Mr.J.James, the learned counsel appearing on behalf of the appellant/2nd plaintiff and Mr.P.Harish, the learned Government Advocate appearing on behalf of the respondents/defendants and perused the materials available on record.

10. The learned counsel appearing for the appellant/2nd plaintiff would contend before the trial Court that in order to prove the title, the plaintiffs produced two sale documents as Ex.A1 and Ex.A2. Further, in order to prove her possession, she has produced the demand notice dated 07.08.1961, for the payment of house tax as Ex.A11 and the copy of the house tax receipts (6 in numbers) as Ex.A12. Apart from those documents, the marriage invitation, pertains to the 2nd plaintiff dated 23.02.1975, was marked as Ex.A14. More than that the school certificates, community certificates pertains to the children of 2nd plaintiff as well as the driving licence of the husband of the 2nd plaintiff, were marked as Ex.A14 to A21.

11. Learned counsel for the appellant/2nd plaintiff would further contend that those documents marked on the side to the plaintiffs, would prove that both the plaintiffs were residing in the suit schedule property, from the year of 1975 onwards. In the said occasion, being the reason that the suit schedule property is a Natham poramboke, they are entitled to title to the suit property. Further, they are entitled to title by way of adverse possession also. The trial Court without considering the year of the documents, mainly relying on the discrepancy found in the schedule of property mentioned in Ex.A1 and Ex.A2, came to the conclusion that the plaintiffs have not proved their case, which is erroneous in law. He would further submit that even assuming that the entire property viz., 4200 sq. feet is not in the possession of the plaintiffs, assuming that the plaintiffs were in the possession of the suit property, they are entitled to the relief of declaration and injunction for the lesser portion i.e. 888 s.ft and accordingly, he prayed for allowing this appeal.

12. Per contra, the learned counsel appearing for the respondents/defendants would contend that vide Ex.B1 and Ex.B2,



in the year of 1991 itself, the 1st defendant assigned the suit schedule property in favour of the 4th defendant. Even after knowing the same, the plaintiffs have not filed a suit till 2010. The said delay in filing the suit will go to show that the plaintiffs are not in the possession of the suit schedule property and due to the same, they cannot claim any right and title over the suit property by saying that the suit schedule property is a grama natham.

13. Now, on considering the said submissions, made by the learned counsel appearing on either side with relevant records, it would go to show that both the Courts below mainly relying on the discrepancy found in the sale deeds which were marked on the side of the plaintiffs as Ex.A1 and Ex.A2, came to the conclusion that the plaintiffs have not proved their title and also by considering the delay in filing the suit, the Court below refused to accept the contentions raised by the plaintiffs and dismissed the suit.

14. It is true vide Ex.A1 - Sale Deed dated 13.08.1938, the vendor of the plaintiff Karuppa Naicker purchased two house properties. In the description of property found in the said sale deed, the survey number and the extent has not been mentioned. However, as rightly pointed out by the learned counsel appearing for the respondents, there was a clear recital, that two house properties, were sold to the Karuppa Naicker.

15. In the said occasion, it is the case of the plaintiffs that the 1st plaintiff purchased the suit schedule property from the said Karuppa Naicker vide Ex.A2 dated 10.02.1956. On careful perusal of the said sale deed, it seems that the plaintiff has purchased only one house property without any extent. Therefore, the contradictions found in the sale deeds would reveal the fact that the vendor of the plaintiff Karuppa Naicker, after made purchase, in the year of 1938, sold a portion of the property, which alone has been purchased by the 1st plaintiff. Therefore, it would be necessary for the plaintiffs to prove the fact that the 1st plaintiff purchased the property measuring an extent of 2400 sq.ft. In this regard, in order to prove the same, the plaintiff has not produced any documentary evidence.

16. It is the further case of the plaintiffs that after made purchase in 1956, vide Ex.A2, they sold the portion of the property to one Balasubramanian, Madeswaran and Arumugam, vide Ex.A3 to Ex.A5 dated 20.02.1997. In the sale deeds, though the



extent of property was mentioned, the Survey Numbers pertains to the said property has not been mentioned. Further, through the sale deeds, the plaintiffs have sold the vacant site and not the house property. In this occasion, a doubt arises in the mind of this Court that after purchasing the house property, how the plaintiffs have sold the vacant site without mentioning the house property as one of the boundary. Therefore, it is clear that the plaintiffs have filed the suit with unclean hands.

17. Here it is a case, in order to prove the possession of the suit property, the plaintiffs have produced copy of the house tax receipts as Ex.A12 and further, marked the copy of the Voter's list as Ex.A15. All the documents are from the year of 1982-83 to 1991-92. According to the said documents, the Executive Officer, Surampatti Town Panchayat, issued the house tax receipts in the name of the 1st plaintiff. But at the same time, on going through the Door Number, there was a contradiction as in some of the receipts, it was mentioned as '30' and in some other receipts it was mentioned as '33'. In the voter's list also, the door number was mentioned as '33'.

18. Accordingly, those documents would reveal the fact that the Executive Officer, Surampatti Town Panchayat, issued the tax receipts for two door numbers which stands in the name of the 1st plaintiff. Accordingly, the 1st plaintiff is in the possession of two house properties, which creates a doubt, whether the plaintiffs were residing in the house which was purchased vide Ex.A2. In this aspect also, the plaintiffs have approached the trial Court without mentioning the correct particulars in respect to the house owned by them.

19. Yet another aspect which has to be decided in this appeal is that vide Ex.B2 dated 24.04.1991, the 1st defendant herein allotted the suit schedule property in favour of the 4th defendant. Further, vide Ex.B3 dated 31.05.1991, the 4th defendant took the possession of the suit property, which shows, in 1991 itself, the 4th defendant is in the possession of the suit schedule property and on the other hand, the tax receipt produced by the plaintiffs would show that the same pertains to the year of 1994-95, which will also create a doubt as to how the Executive Officer, Surampatti Town Panchayat, issued the tax receipt in the name of the 1st plaintiff in the year of 1995, that too, after handing over the possession to the 4th defendant in the year of 1991 itself.

20. Being the reason that the suit schedule property is a grama natham, if the plaintiffs prove long possession, they are



entitled for the patta. But in this case, the plaintiffs claim the suit property as their own property. In this connection, if really the sale deeds i.e. Ex.A1 and Ex.A2 pertains to the suit property, the plaintiffs, after purchase, ought to have approached the revenue authorities, for entering their names in the revenue records.

21. Herein it is a case, Ex.B4 copy of the Natham Adangal Register dated 03.02.2007, Ex.B5- copy of the RSR dated 03.12.2007, Ex.B7-copy of the field map, all would go to show that the suit property is a vacant land. The 2nd plaintiff, examined as PW1 has also stated in her cross examination that as of now the suit property is a vacant land and only a dilapidated house is there. The documents exhibited on the side of the defendants and the evidence of PW1 would go to show that the plaintiffs were not in the possession of the suit schedule property. Therefore, the plaintiffs cannot claim the property by way of adverse possession also.

22. Accordingly, this Court is of the considered opinion that the present suit has not been filed with correct description of property. Further, the contradictions found in the description of the property in Ex.A1 and Ex.A2 would create a doubt whether the plaintiff has purchased the entire extent of 4200 sq.ft from Karuppa Naicker.

23. In this occasion, since the present suit has been filed for the relief of declaration and injunction, it would be necessary to see the judgment in Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others, reported in 2014 (2) SCC 269, wherein our Hon'ble Supreme Court has held as follows:

"It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."



24. Now, applying the principles set out in the above referred judgment to the case in hand, the law is well settled that for allowing the relief of declaration, the person, who prayed the said relief has to prove his case. The weakness found in the case of the defendant cannot be taken into account for considering the prayer sought by the plaintiff.

25. Herein also, as already observed, there was a lot of infirmities found in the case of the plaintiffs, particularly, in respect to the title and possession. Therefore, in the absence of satisfactory evidence in respect to title, the relief of declaration cannot be granted. The Courts below have also traversed in the same line and decided the suit concurrently as the plaintiffs are not entitled to any relief. Therefore, the concurrent judgment and decree passed by the Courts below, do not warrant any interference and the same are confirmed. The substantial questions of law framed, are answered as above.

26. In the result, the second appeal fails and the same is dismissed. No Costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Erode.

2. The I Additional District Munsif,
Erode.

Copy to

The Section Officer
VR Section Officer
High Court, Madras 104.

+1 CC to Mr.T.Arulraj, Advocate sr 4575
+1 CC to The Special Government Pleader sr 4962.

S.A.No.1207 of 2010

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SP(25/02/2022)