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S.A.No.103 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.03.2022

PRONOUNCING ORDERS ON : 09.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.103 of 2012
and M.P.No.1 of 2012 & CMP Nos.103 of 2012

1.P.Jayanthi
Rep.by her Power Agent
A.Arujunan

2.S.Bandarinathan

..Plaintiffs/Respondents/Appellants

..Vs..

1.C.Hemathiri
2.Kesavan

..Defendants/Appellants/Respondents
..2nd Defendant/Appellants/Respondents

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.29 of 2010 by the Principal Sub Judge, Chengalpet, dated 25.11.2011, setting aside the judgment and decree passed in O.S.No.297 of 2008 by the District Munsif, Chengalpet dated 31.08.2010.

For Appellant : Mr.R.Manickavel

For Respondents : Mr.S.Ramesh
for R1



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JUDGMENT

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The plaintiff is the appellant in this Second Appeal.

2.The case of the plaintiff is that the suit property and another extent of 5 cents was owned by one G. Elumalai. Even though it stood in his name, the property was held by G.Elumalai for the welfare of the entire family. The said G.Elumalai had a younger brother named Parthasarathy. The further case of the plaintiff is that the said G.Elumalai, his wife and his children and the above said Parthasarathy orally divided the 10 cents of land and the suit property was allotted to the share of Parthasarathy.

3.It is stated that the western side of the property was enjoyed by Parthasarathy and the eastern side was enjoyed by G.Elumalai and his family. A joint patta was also issued in their names.

4.The further case of the plaintiff is that the said Parthasarathy executed a registered Settlement Deed in the name of the plaintiff on 19.02.2007 (marked as Ex.A-8). Upon execution of the said document, the plaintiff claims to be in possession and enjoyment of the property and the revenue records were also



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transferred in the name of the plaintiff.

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5.The grievance of the plaintiff is that the defendants attempted to interfere with the peaceful possession and enjoyment of the suit property and hence, the suit came to be filed seeking for the relief of permanent injunction.

6.The 1st defendant filed a written statement. He has taken a stand to the effect that G.Elumalai was the absolute and exclusive owner of the entire property measuring 10 cents. He died in the year 1983 leaving behind his wife and children as his legal heirs. The further case of the 1st defendant is that they sold the entire 10 cents in favour of one Munusamy through a registered Sale Deed dated 07.09.2006 (Ex.B-2). On purchase of the property, the said Munusamy obtained a patta in his name for the entire 10 cents on 18.12.2006 (Ex.B-5). Thereafter, the said Munusamy sold the entire 10 cents in favour of the 1st defendant through a registered Sale Deed dated 01.03.2007. Thus, the 1st defendant is claiming to be the absolute owner of the entire extent of 10 cents of land in Survey No. 229/37. The 1st defendant also mutated his name in the revenue records and patta was issued in his favour, marked as Ex.B-10. The 1st defendant has therefore sought for the dismissal of the suit. The 2nd defendant has also filed a separate written statement and



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supported the case of the 1st defendant.

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7.The Trial Court on appreciation of oral and documentary evidence and after considering the facts sand circumstances of the case, decreed the suit and granted the relief of permanent injunction. Aggrieved by the same, the 1st defendant filed an appeal before the Principal Sub-Court, Chengalpattu in A.S. No. 29 of 2010 and the appeal was allowed through a judgment and decree dated 25.11.2011. Thereby, the judgment and decree of the Trial Court was set aside. Aggrieved by the same, the plaintiff has filed this Second Appeal.

8.Heard Mr.R.Manickavel, learned counsel for the appellants and Mr.S.Ramesh, learned counsel for the 1st respondent.

9.When the case came up for hearing on 17.02.2022, the learned counsel for the appellant submitted that the defendant had conveyed the entire property in favour of one Chandrababu as early as on 19.06.2008 and in turn, the said Chandrababu sold the property in favour of one Dayalan through a Sale Deed dated 20.07.2011 and therefore, it was submitted that the 1st defendant does not even own the property and he was contesting the case as if, he was owning the entire 10 cents



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of property. A petition was also filed under Order XLI Rule 27 CPC., to file certain documents to establish that the property has already been conveyed by the 1st defendant. This Court directed the learned counsel for the respondents to take instructions in this regard and report before this Court.

10.The matter was again taken up for hearing on 07.03.2022. The learned counsel for the respondents submitted that 5 cents of land was conveyed by the 1st defendant in favour of Chandrababu and the plaintiff was aware of this fact. To substantiate this submission, the learned counsel also pointed out to the relevant portion in the cross examination of PW-1 and for proper appreciation, the same is extracted hereunder:

மேற்சொன்ன 10 செண்டில் கிழக்கு புறம் உள்ள 5 செண்ட் நிலத்தை
1-ஆம் பிரதிவாதி விற்றுவிட்டார் என்று சொன்னால் சரிதான்.

11.The learned counsel further submitted that the 1st defendant continues to be the owner of the suit property and the sale that was made in favour of Chandrababu, will not have any bearing while deciding this Second Appeal.

12.The plaintiff was claiming a right through an alleged oral partition between G. Elumalai and Parthasarathy. Admittedly the entire property stood in the name of



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G.Elumalai and the same is clear from Ex.A-1. The property has been described as a vacant house site by the plaintiff. Therefore, the determination of the possession to the suit property will be only based on title.

13.The Trial Court has heavily relied upon the joint patta (Ex.A-2) and the patta standing in the name of the plaintiff (Ex.A-9). The Trial Court also relied upon the Settlement Deed (Ex.A-8) and held that the defendant had not taken any steps to cancel this document. Accordingly, the Trial Court found that the plaintiff is in possession and enjoyment of the suit property and decreed the suit.

14.The Appellate Court took into consideration the fact that Ex.A-1 exclusively stood in the name of the said G.Elumalai. On going through the contents of the document, the Lower Appellate Court found that there is no mention that Elumalai purchased the property for the welfare of the family. It was also found that G.Elumalai was employed in Railways and he had an independent income and it is specifically stated in the Sale Deed that he only paid the consideration for the property.

15.The plaintiff has approached the Court with a specific case that there was a oral partition between G.Elumalai and his brother Parthasarathy. Therefore, the



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burden of proof is upon the plaintiff to prove the oral partition. G.Elumalai died in the year 1983 and hence, the oral partition should have taken place before that. The suit itself came to be filed only in the year 2008. The plaintiff was represented by a Power of Attorney agent who examined himself as PW-1 and he states during evidence that he came to know about the oral partition through the plaintiff. Neither the plaintiff nor any person who was a witness to the oral partition or was aware about the oral partition came into the witness box and deposed about the same. Therefore, the Lower Appellate Court held that the oral partition itself has not been proved.

16.The learned counsel for the appellant by relying upon the evidence of DW-1 wanted to establish that there was a oral partition and Parthasarathy became the owner of 5 cents of land and thereafter the property was settled in favour of the plaintiff. The plaintiff must stand or fall only based on the evidence produced before the Court and until the plaintiff discharges this burden, the plaintiff cannot be allowed to pick holes in the case of the defendant and establish the case of the plaintiff.

17.The Lower Appellate Court specifically found that the Settlement Deed



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(Ex.A- 8) executed by Parthasarathy does not recite as to how Parthasarthy became the owner of the property. Therefore, the Lower Appellate Court did not rely upon the Settlement Deed also.

18.The stand taken by the defendant directly questions the right and title of the plaintiff in the suit property. Under such circumstances, the plaintiff ought to have sought for the relief of declaration of title to the suit property and a suit for bare injunction is not maintainable. This issue has also been gone into by the Lower Appellate Court and held against the plaintiff by taking note of reported judgments.

19.The point that was urged by the learned counsel for the appellant to the effect that the 1st defendant concealed the property being conveyed on 19.06.2008 in favour of Chandrababu, does not have any impact while deciding this Second Appeal. Only 5 cents of land was conveyed by the 1st defendant and even otherwise, it is the duty of the 1st defendant to safeguard the right and interest of the purchaser of the property. Therefore, this fact has absolutely no bearing in the present case.

20.In the considered view of this Court, the Lower Appellate Court had rendered its findings after taking into consideration the oral and documentary



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evidence and it has assigned proper reasons while reversing the findings of the Trial Court. There are absolutely no grounds to interfere with the same. In any event, no substantial questions of law are involved in this Second Appeal.

21.In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.03.2022

Internet: Yes
Index: Yes/No
KP

To

- 1.Principal Sub Judge, Chengalpattu.
- 2.District Munsif, Chengalpattu
- 3.The Section Officer
V.R.Section,High Court, Madras.

N.ANAND VENKATESH,J.
KP



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Pre-Delivery Judgment in
Second Appeal No. 103 of 2012

09.03.2022

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