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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NO.227 OF 2015

AND

M.P.NO.1 OF 2015

1. Perumal Mandiri (Died)

2. Parasuraman

3. P.Krishnan

4. L.Maniammal

5. P.Elumalai

6. P.Kannappan

7. S.Mahalakshmi

... Appellants

Appellants 2 to 7 brought on record
as LR's of the deceased 1st appellant
viz., (Perumal Mandiri) vide Court order
dated 03.03.2022 made in C.M.P.Nos.7717
to 7724 of 2018 in S.A.No.227 of 2015 (NAVJ)

.Vs.

1. Kannan (Died)

2. Vilvamani

3. Chinnadurai

4. Dhandabani

5. Lalitha

6. K.Sivakumar

7. K.Arul



8. Smt.Uma

9. Smt.Jayamalini

... Respondents

Respondents 5 to 9 brought on record
as LR's of the deceased 1st respondent viz.,
(Kannan) vide Court order dated 03.03.2022
made in C.M.P.Nos.2212 to 2214 of 2017
in S.A.No.227 of 2015.

PRAYER:-

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree to set aside the judgment and decree passed by the Lower Appellate Court in A.S.No.18 of 2013 dated 28.08.2014 on the file of the Sub Court, Arni, Tiruvannamalai District partly allowing and partly dismissing the decree and judgment of the Trial Court in O.S.No.202 of 2002 dated 14.12.2012 on the file of the District Munsif Court, Polur, Tiruvannamalai District.

For Appellants : Mr.K.Hariharan

For Respondent : Mr.M.Suresh
For RR5 to 9

No appearance
For R2 to R4

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The case of the plaintiff is that the suit property situated at Survey No.345/2, measuring an extent of 1.74 acres was owned by one Muthusami Mandiri and he sold the property to the plaintiff by virtue of Exs.A4 and A5. The further case of the plaintiff is that after the purchase of the property, the name of the plaintiff was also mutated in the Revenue Records and he was also paying the necessary kisth and receipts were issued in his name.

3. The grievance of the plaintiff is that the defendants were attempting to interfere with the possession and enjoyment of the suit property and were also attempting to create a cloud over the title of the plaintiff. Hence the suit was filed



seeking for the relief of declaration of title and for consequential permanent injunction.

4. Defendants 1 to 4 did not contest the suit and only the fifth defendant contested the suit. The fifth defendant filed a written statement and took a stand that the suit property was originally a joint family property of defendants 1 to 4 and they partitioned all the properties through a Partition Deed dated 15.11.1974 which was marked as Ex.B1. The further case of the fifth defendant was that under this Partition Deed, the suit property was identified as 'D' Schedule and it was allotted in favour of the first defendant to an extent of 87 cents. It is stated that the first defendant along with his sons, who are defendants 2 to 4, were in possession and enjoyment of 87 cents of land after the partition. Out of the 87 cents, an extent of 58 cents was sold in favour of the fifth defendant through a registered Sale Deed dated 04.04.2001 marked as Ex.B2. Thus, the fifth defendant took a categorical stand that the plaintiff is not entitled for title over 1.74 acres of land and hence sought for the dismissal of the suit.

5. The Trial Court after considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a categorical conclusion that the plaintiff has made out a case and hence decreed the suit as prayed for through judgment and decree dated 14.12.2012. Aggrieved by the same, the fifth defendant filed an Appeal before the Sub Court, Arani in AS No.18 of 2013. The Lower Appellate Court on re-appreciation of the oral and documentary evidence and on considering the finding of the Trial Court, was pleased to allow the Appeal through judgment and decree dated 28.08.2014 and thereby the judgment and decree of the Trial Court was set aside and consequently the suit was dismissed. Aggrieved by the same, the plaintiff has filed this Second Appeal.

6. When the Second Appeal was admitted, this Court framed the following substantial questions of law:

i) When the plaintiff's vendor and the vendor's father derive title from the government by assignment and grant and patta proceedings, can the Civil Court go into the question of title of the plaintiff's side, in the absence of any alienation by the plaintiff and his vendor?

ii) Is the title and grant given by the Government by issuing assignment order and patta to the plaintiff's vendor, is grant not complete title



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in the hands of the plaintiff's side and is it justifiable by the Civil Court to find any title outside the grant in third parties, in the absence of the government being a party? and

iii) Can the Lower Appellate Court reject and refuse to consider the entire Exs.A1 to A.14, proving the plaintiff's side title, possession and enjoyment, and refuse to grant the relief of injunction even in part, when the defendants' side had not produced any documents to prove their possession and enjoyment?

7. Heard Mr.K.Hariharan, learned counsel appearing for the appellants and Mr.M.Suresh, learned counsel appearing for respondents 5 to 9. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8. There is no dispute with regard to the fact that the suit property was originally a Poramboke land and the Government through an assignment patta marked as Ex.A1, assigned the property in favour of Thanja Mandiri. The said Thanja Mandiri had two sons namely Govindasami Mandiri and Muthusami Mandiri. After the demise of Thanja Mandiri, his sons through Ex.A3 divided the properties among each other and the suit property was allotted in favour of Muthusami Mandiri. This Court went through the original document and found that the suit property has in fact been allotted in favour of Muthusami Mandiri through Ex.A3. The said Muthusami Mandiri sold the suit property to the plaintiff through Exs.A4 and A5. Thus the plaintiff is claiming right and title over the suit property through Exs.A1, A3, A4 and A5. Insofar as the possession and enjoyment of the property is concerned, the plaintiff relied upon Exs.A2, A6 to A14.

9. One Muthusami Mandiri was a common ancestor, who had two sons namely Thanja Mandiri and Chinnappa Mandiri. The said Chinnappa Mandiri had certain properties allotted in his favour as joint family properties. This Chinnappa Mandiri had five sons. They among themselves entered into a partition through Partition Deed dated 15.11.1974 which was marked as Ex.B1. According to the fifth defendant, one of the sons namely Govinda Mandiri was allotted 87 cents under this Partition Deed in the suit property. Out of the said 87 cents, 58 cents was sold by Govinda Mandiri in favour of the fifth defendant through Ex.B2. The said Govinda Mandiri, died during the pendency of the suit. His sons, who are Defendants 2 to 4, did not contest the case.



10. The main issue that arises for consideration is as to how the sons of Chinnappa Mandiri made a claim over a land that was assigned in favour of Thanja Mandiri. That apart, in the Partition Deed executed under Ex.B1, neither Govindasamy Mandiri, nor Muthusami Mandiri were parties and hence how will the property in Survey No.345/2, that was added in this Partition Deed, bind the legal heirs of Thanja Mandiri, will be the moot question.

11. The Trial Court after analysing the oral and documentary evidence categorically found that the suit property was allotted in favour of Muthusami Mandiri, under Ex.A3 and he had conveyed the title in favour of the plaintiff. The Trial Court also found that defendants 1 to 4 conveniently remained ex-parte and did not come before the Court to prove as to how they became entitled for the suit property. Therefore, adverse inference was drawn against defendants 1 to 4. The Trial Court also took into consideration the fact that if really 87 cents was given to the first defendant and he had conveyed through Ex.B2 an extent of 58 cents in favour of the fifth defendant, there was not even a mention about the balance lands which would have formed part of the boundary in the Sale Deed.

12. The Trial Court also took into consideration the evidence of Muthusami Mandiri, who was the vendor of the plaintiff and was examined as P.W.2. He categorically stated in his evidence as to how he is entitled for the suit property and how it was conveyed in favour of the plaintiff. On the side of the defendant, the fifth defendant and one Babu, were examined as witnesses. According to the fifth defendant, an extent of 58 cents was purchased in the suit property through a Sale Deed dated 04.04.2001. However, there was not a single document that was available to show that he had taken possession of the property or that there were any entries found in the Revenue Records to show that it stood at least in the name of his vendor Govinda Mandiri. The Trial Court on appreciation of the evidence on the side of the defendant came to a categorical conclusion that there was absolutely no evidence to show that Govinda Mandiri, owned 87 cents in the suit property. In view of the same, the Trial Court came to a categorical conclusion that the plaintiff is entitled for the relief sought for in the suit.

13. The Lower Appellate Court had decided the Appeal more on the ground of probabilities than by looking into the actual evidence that is available on record. The Appellate Court comes to a categorical conclusion at page No.14 of the judgment that Item No.6 in the 'B' Schedule Property as found in Ex.A3 was allotted in favour of Muthusami Mandiri and it was found to have an extent of 1.74 acres. After having held so, the Lower



Appellate Court starts comparing Exs.B1 and A3 and rendered findings on probabilities. According to the Lower Appellate Court, under Ex.A3 it has been mentioned that Muthusami Mandiri, has only half share out of 1.74 acres and therefore, he is entitled only for 87 cents. Therefore, according to the Appellate Court, the plaintiff cannot claim a title over 1.74 acres and at the best he can only claim for an extent of 87 cents. This finding of the Appellate Court is totally perverse and it is against the specific recitals found in Ex.A3. The Appellate Court has not properly appreciated the findings of the Trial Court and it has been reversed on mere assumptions and misreading of Ex.A3.

14. The admitted case is that the assignment was made only in favour of Thanja Mandiri and it is also admitted that Muthusami Mandiri is one of the son of Thanja Mandiri. That is the reason why when there was partition between the sons of Thanja Mandiri, the suit property was allotted in favour of Muthusami Mandiri under Ex.A3. There was absolutely no right for the branch belonging to Chinnappa Mandiri, over the suit property, since the assignment had been made specifically in favour of Thanja Mandiri. This crucial fact has not been taken note of by the Lower Appellate Court. Hence the title to the suit property can pass on only through the branch of Thanja Mandiri to whom the assignment was specifically made by the Government. Consequently, the plaintiff who traced the title through the branch of Thanja Mandiri will be entitled to claim title over the suit property and it is substantiated through Ex.A3. The first and second substantial questions of law are answered accordingly in favour of the appellant.

15. The Lower Appellate Court did not even take into consideration the fact that there was not a single document available on the side of the defendants to show that they have been in possession of the suit property at any point of time if really they had the title for the same. On the other hand, the plaintiff had filed Ex.A2, Exs.A6 to A14 to substantiate the possession over the property and the mutation that had been taken place in the Revenue Records. Since the title has been found in favour of the plaintiff, considering the nature of the property, the possession will also follow. The third substantial question of law is answered accordingly in favour of the appellant.

16. In view of the above discussion, this Court has no hesitation to interfere with the Judgment and decree of the Lower Appellate Court since this Court finds that the findings rendered by the Lower Appellate Court is perverse. Accordingly, the judgment and decree made in A.S.No.18 of 2013 dated



28.08.2014 is hereby set aside. The judgment and decree of the Trial Court is restored and consequently the suit is decreed as prayed for.

17. In the result, the Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

jv

To

1. The Subordinate Judge,
Arni, Tiruvannamalai District.
2. The District Munsif,
Polur, Tiruvannamalai District.

+1cc to Mr.K.Hariharan, Advocate, S.R.No.21937

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AK-II(CO)
PBS/17/05/2022