



S.A.No.676 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10 .2022

CORAM

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

S.A.No.676 of 2013

Saroja (deceased)

- 1.Jeeva
- 2.Mohana
- 3.Ulaganathan
- 4.Neela

....Appellants

Vs.

- 1.Seeralan
- 2.Marimuthu

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dismissing the suit for the relief of declaration dated 29.07.2009 in A.S No. 69 of 2008 on the file of Sub Ordinate Judge, Knachipuram, confirming the Judgement and Decree dated 16.11.2007 in O.S No.88 of 2000 on the file of Additional District Munsif Court, Kanchipuram.

For Appellants : Mr.R. Mubarak Basha

For Respondents : Mr.Jyothis Chander



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JUDGMENT

The appellants herein are the plaintiffs in the suit in O.S.No.88 of 2000 filed against the defendants/respondents herein for the relief of declaration and permanent injunction with regard to A and B schedule suit properties in survey No. 3, situated at Mangalmpadi Village, Kanchipuram taluk. The defendants denied the plaintiffs right over the suit property by contended that by way of purchase and adverse possession the defendants are in exclusive possession of the properties. Considering the oral and documentary evidence the Trial Court held that the suit property is Government Poramboku land, therefore the plaintiffs are not entitled for declaration. With regard to permanent injunction, it has been held that the plaintiffs are in possession of the suit property hence permanent injunction was granted in favour of the plaintiffs.

2. Aggrieved over the same, the plaintiffs preferred an appeal before the Subordinate Judge, kanchipuram, in A. S. No. 69 of 2008, the lower appellate Judge independently analysed the facts and evidence, dismissed the appeal and confirmed the findings of the Trial Court.



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WEB COPY 3. Challenging the same, the plaintiffs preferred this second appeal.

Parties are addressed as per the suit.

4. The Brief facts of the case are as follows:

Originally the suit was filed by one Saroja, wife of deceased Murugesan who is the original occupier of the A and B schedule suit property and remaining plaintiffs are legal heirs of the said Murugesan. The said Murugesan and the second defendant are brothers. Originally the Suit A and B schedule property was occupied and enjoyed by said Murugesan as cultivable land till his demise. Thereafter, his legal heirs/plaintiffs possessed and enjoyed the suit property by cultivating crops and coconut trees. During the life time of the said Murugesan he purchased the A schedule Property from one Ponnusamy and others through un-registered sale deed dated 23.02.1970/Ex.A3. Thereafter, he purchased B schedule property from one Gopal and others through sale deed/ Ex.A2 dated 24.04.1973 and also got electricity connection for the Well in B schedule property. While so, after the demise of the Murugesan, the second defendant caused interference in the enjoyment of the suit properties. So the plaintiffs gave a complaint before the



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Police, At that time the first plaintiff came to know that the second defendant fraudulently obtained sale deed dated 01.12.1983 by getting signature from the Saroja, with regard to 50 cents in B schedule property. As the first plaintiff is being a illiterate women, from her the second defendant fraudulently obtained signature and executed sale deed in favour of him. Hence, the plaintiff filed a suit for declaration and permanent injunction.

5. The Second defendant submitted that after the demise of his brother Murugesan he helped the first plaintiff and her family. While so, in the year 1983, out of family necessity the first plaintiff sold 50 cent in B schedule property for valid consideration from then he has been in possession and enjoyment of that property and also paying tax to the Government. Thereafter, in the year 1983, he purchased 30 cents in A Schedule suit property for a sum of Rs. 2000/- and remaining properties were enjoyed by the plaintiffs and other Co-sharers. Thereby he totally denied the plaintiffs right and possession over the suit property.

6. Trial Court framed 3 issues and on considering the submissions and evidence on either side, concluded that the suit properties are “Poramboku”



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land belongs to the Government, hence the Trial court refused to grant the relief of declaration claimed by the plaintiff. But held that the entire properties are under the enjoyment of the plaintiffs' family thereby granted permanent injunction against the defendants.

7. Aggrieved over the same, the defendants preferred an appeal in A.S No. 69 of 2008, before the Subordinate Court, Kanchipuram, wherein, the Lower appellate Court independently analysed the facts and evidence, confirmed the findings of the Trial Court and dismissed the appeal. Challenging the same, the defendants filed this second appeal before this Court. This Court admitted the appeal with the following substantial questions of law :

i. Whether the facts of the present case as pleaded by the plaintiffs fall under the doctrine of non est factum and hence the onus of proof is upon the 2nd defendant to explain the circumstances under which the sale deed was executed in his favour on 01.12.1983 by the plaintiffs?

ii. Where the plaintiff's have taken a specific plea in the plaint that the sale deed dated 01.12.1983 is vitiated by undue influence and this plea has not been specifically denied by the 2nd defendant, whether the same can be construed as admission under Order VIII Rule 5 of the Code of Civil Procedure?

Iii. Whether both the Courts below failed to properly appreciate the oral and documentary evidence that were available on record before denying the relief of declaration for by the plaintiffs?



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8. The learned counsel for the appellants/defendants submitted that the plaintiffs have not proved before the Courts below that Ex.B2 was obtained by the second defendant under coercion and fraud, but without considering the possession and enjoyment of the suit properties by the defendants, granted relief of permanent injunction in favour of the plaintiffs is totally mis-conception of law and facts which is perverse in nature. Hence, he prayed to set aside the findings rendered by the Courts below.

9. Heard, Mr.R.Mubarak Basha, learned counsel appearing for the appellants, and Mr. Y.Jyothis Chander, learned counsel appearing for the respondent.

10. The plaintiffs claimed right over the suit property by contending that the entire properties are Poramboku land assigned to the said Murugesan who is husband of the first plaintiff and father of the other plaintiffs, by way of purchase through sale deed/Ex.A2 and enjoyed till his demise in the year on 1978. Thereafter, plaintiffs enjoyed the suit properties



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absolutely after his demise cultivating the lands by planting paddy crops and coconut trees, wherein, the second defendant caused interference who is brother of Murugesan as he has no right over the property. It is an admitted fact that the lands are classified as Proamboku land. But based upon Ex.A2 and Ex.A3 the first plaintiff Saroja claimed that her husband purchased the property. As per the recitals in Ex.A2 the vendor transferred only title with regard to S.No.2/6 in favour of Murugesan. So also, Ex.A3 is an un-registered sale deed through which Murugesan purchased A schedule property to an extent of 1.20 acres in S.F No. 3. Admittedly the suit properties are classified as Poramboku land. The vendors of the Murugesan also not conferred with any title since properties belongs to the Government about the documents Ex. A2, A3 the defendants also admitted that till the demise of Murugesan he cultivated the A and B schedule suit properties. Hence, with regard to possession and enjoyment of the properties those two documents Ex.A2 and Ex.A3 could be looked into as a collateral purpose. The Trial Court rightly appreciated these aspects which needs no interference.

11. But the learned counsel for the defendant submitted that the second defendant purchased 50 cents of B schedule property from the plaintiff under



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Ex.B1/sale deed in the year 1983 thereafter, he was in possession and enjoyment of the property but the plaintiff contended that the sale deed was obtained by undue influence, coercion and fraud, however the same was not proved by the plaintiff but the Court below failed to taken note of this fact also there is no findings with regard to validity of Ex.B1 sale deed stands in the name of the second defendant. On considering the submissions even assuming that the first plaintiff executed sale deed Ex. B1 in favour of the second respondent is valid one but as discussed above neither the plaintiff nor anybody has right or title over Government Poramboku land. Hence, alleged transfer of portion of Poramboku land in B schedule property in favour of the second defendant through Ex.B1 is invalid document and it would not confer right to title over the said property. Though the defendant contend that after said purchase in the year of 1983 he was in continuous possession and enjoyment of the property till date of the suit. But, So far, there is no material evidence on his side to prove continuous possession and enjoyment. But he produced Ex.B6 to B9 Kist receipts which dated after filing of the suit. Moreover, he has not transferred the property in his name or pay kist to the Government. On the other hand, the plaintiffs produced Ex.A2 to A17 kist



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receipts, electricity bill card, which proves that plaintiffs are in possession and enjoyment of the A and B schedule property, and also in the portion of B schedule there is a pumpset with electricity connection and the same is enjoyed by the plaintiffs by paying electricity bill which proved the same through Ex.A17. Apart from that, through commissioner report the cultivation of the land by the plaintiffs also established. On the other hand, defendants not produced any material evidence to show that he is in possession and enjoyment of the entire suit properties. The Court below rightly appreciated all these aspects which needs no interference.

12. Therefore, the suit properties are classified as Poramboku land, neither the plaintiffs nor the defendants have right over the suit properties as it belongs to the Government. Even assuming that Ex.B1 was executed by the plaintiffs in favour of the defendants it would not confer any title in favour of the defendant, the fact remains that plaintiffs family is in possession and enjoyment of the suit property from 1970. Even assuming the Ex.B1 is valid one it will not bind the plaintiffs because it is Government Poramboku land. Therefore, the Court below rightly rejected the relief of declaration to declare sale deed as void for the reason that it is *non-est* in law. However, the



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possession is rightly proved by the plaintiff and commissioner report also proves the same, hence the relief of permanent injunction against the defendants in favour of the plaintiffs needs no interference by this Court. Accordingly, the questions of law are answered and this second appeal is dismissed as devoid of merits. Thereby the suit is decreed in respect of permanent injunction in favour of the plaintiffs and with regard to declaration the suit is dismissed. No costs.

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T.V.THAMILSELVI, J.

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To

- 1.The Sub Court, kanchipuram.
2. The Additional District Munsif, Kanchipuram.
- 3.The Section Officer,
VR Section.

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