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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

SECOND APPEAL NO.170 OF 2014
CMP NOS.21006, 21007 & 21014 OF 2019

N.Ramalingam (Died)

1.Kulandai Ammal

2.Poomalai

3.R.Annamalai

4.R.Dharmaraj

5.Govindammal

6.R.Venkataraman

...Appellants / LR's of Defendants

Cause title accepted vide order of Court
dated 05.02.2014 made in MP No.1/2014
in SA SR No.45020 of 2013

Vs.

1.Rayadurai @ Rajadurai

2.Iyyandurai

3.R.Ramamorthy

...Respondents 1 & 2 / Plaintiffs

...3rd Respondents / LR of Defendant

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 13.07.2012 in A.S.No.56 of 2010 on the file of Principal Subordinate Court, Salem confirming the judgment and decree dated 21.08.2003 in O.S.No.837 of 2001 on the file of Principal District Munsif Court, Salem.

For Appellants : Mr.P.Jagadeesan

For Respondents : Mrs.Sasikala Ramadoss, for R2

JUDGMENT

The legal representatives of the defendant are the appellants in the Second Appeal.

2. The first and second respondents/plaintiffs filed a suit seeking for the relief of declaration of title and for permanent injunction.



3. The case of the plaintiffs is that a Settlement Deed was executed by the grandfather of the plaintiffs in the year 1947, which was marked as Ex.A1 and as per this Settlement Deed, the property was settled in favour of the father of the plaintiffs and his brothers. On the demise of the grandfather, there was an oral partition between the father of the plaintiffs and his brothers and the suit property fell into the share of the father of the plaintiffs.

4. The further case of the plaintiffs is that on the demise of their father, they became entitled to the suit property and they have been in possession and enjoyment of the same by paying the necessary tax and kisth to the Government.

5. The grievance of the plaintiffs is that the defendant who is having his property adjacent to the suit property was attempting to disturb the possession and enjoyment of the plaintiffs in the suit property and was also trying to create a cloud over the title to the suit property. Left with no other option, the suit came to be filed seeking for the relief of declaration of title and permanent injunction.

6. The defendant filed a written statement and took a stand that he is none other than cousin brother of the plaintiffs and he denied the right and title of the plaintiffs in the suit property. The defendant also took a stand that he already filed a suit in OS No.621 of 1983 against the plaintiffs and others with regard to the same property seeking for the relief of permanent injunction and the suit was decreed in his favour and it was also confirmed in the Appeal. Therefore, the defendant took a preliminary objection to the maintainability of the suit on the ground that it is barred by res-judicata. The defendant took a further stand that the property was sold by him in favour of a third party and they have not been added as defendants in the suit and hence the suit is hit by non-joinder of necessary parties. Accordingly the defendant sought for the dismissal of the suit.

7. Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently held in favour of the plaintiffs and decreed the suit. Aggrieved by the same, the legal heirs of the defendant have filed this Second Appeal.

8. Heard Mr.P.Jagadeesan, learned counsel appearing for the appellants and Mrs.Sasikala Ramadoss, learned counsel appearing for the second respondent. This Court also carefully went through the materials available on record and the findings of both the Courts below.



9. The plaintiffs in order to prove their right over the suit property examined the first plaintiff as P.W.1 and the Village Administrative Officer as P.W.2. The plaintiffs also filed Exs.A2 to A8 to prove their possession and enjoyment of the suit property. During the pendency of the suit, an Advocate Commissioner was appointed and a Report was filed along with Sketch and the same was also marked as Exs.C1 and C2.

10. Both the Courts below dealt with the preliminary issue of res-judicata that was raised by the defendant. On analysing the description of the property in the earlier suit filed by the defendant and the present suit, it was found that they were two different properties. Hence both the Courts concurrently held that the present suit is not hit by res-judicata. Both the Courts before rendering such a finding also took into consideration the Report of the Advocate Commissioner and found that the suit property and the property to which the defendant was claiming right were two different properties.

11. Both the Courts below also took into consideration the evidence of P.W.2 and the documents relied upon by the plaintiffs and found that the plaintiffs have been in possession and enjoyment of the suit property by paying the necessary tax and kisth to the concerned authorities.

12. This is a case where the plaintiff is claiming title over the suit property by virtue of an oral partition that took place between the father of the plaintiffs and his brothers. It is an admitted case that the suit property along with other properties belonged to the grandfather of the plaintiffs and he had settled the properties in favour of his sons. Thereafter they entered into an oral partition and the suit property was allotted in favour of the father of the plaintiffs. The defendant is none other than the son of one Natesan, who is the brother of the father of the plaintiffs. The oral partition has been sufficiently spoken to by P.W.1 and it is also substantiated by the fact that the suit property was under the possession and enjoyment of the plaintiffs which is borne out by the documents marked as Exs.A2 to A8.

13. Both the Courts below appreciated the oral and documentary evidence and have given a finding that the plaintiffs have established their right and title over the suit property. This Court does not find any perversity in the findings rendered by both the Courts below. Therefore, the same does not deserve the interference of this Court in the Second Appeal. In any event, no substantial questions of law are involved in this Second Appeal.



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

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Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

jv

To

1.The Principal Subordinate Judge,
Salem

2.The Principal District Munsif,
Salem.

3.The Section Officer
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate Sr.No.26860

+1cc to M/s.Sasikala Ramadoss, Advocate Sr.No.27034

Second Appeal No.170 of 2014
CMP Nos.21006, 21007 & 21014 of 2019

SV(CO)
RVM(18/05/2022)