



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)Nos.319 & 644 of 2010 and

M.P.(MD)No.3 of 2010

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S.A.(MD)No.319 of 2010

1. Subbulakshmi
2. Sundarraaj ... Appellants / Respondents /
Plaintiffs

Vs.

Perumalsamy ... Respondent / Appellant /
Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the decree and judgment passed in A.S. No.45 of 2008 on the file of the Subordinate Judge, Kovilpatti dated 27.07.2009 reversing the judgment and decree of the District Munsif, Kovilpatti in O.S.No.172 of 2007 dated 19.11.2008 and thereby allow this appeal.

For Appellants : Mr.T.Selvan

For Respondent : Mr.Anand Chandrasekar

* * *

S.A.(MD)No.644 of 2010

K.Perumalsamy ... Appellant / Appellant /
Defendant

Vs.

1. Subbulakshmi
2. M.Sundarraaj ... Respondents / Respondents /
Plaintiffs

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Court, Kovilpatti, dated 27.07.2009 in A.S.No.45 of 2008 reversing the Judgment and Decree passed by the District Munsif, Kovilpatti, dated 19.11.2008 in O.S.No.172 of 2007.

For Appellant : Mr.Anand Chandrasekar

For Respondents : Mr.T.Selvan

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C O M M O N J U D G M E N T

Heard the learned counsel on either side.

2. These second appeals arise out of O.S.No.172 of 2007 on the file of the District Munsif, Kovilpatti. The said suit was filed by one Subbulakshmi and Sundarraaj. They claimed the relief of permanent injunction against one Perumalsamy. The suit schedules are two in number. The first schedule comprised one item measuring 2 acres and 10 cents. The second schedule comprised six items.

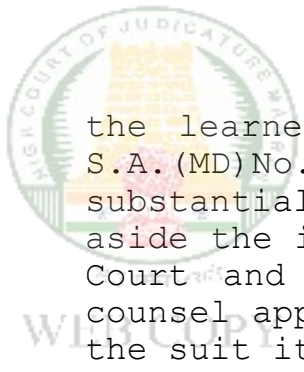
3. Perumalsamy filed written statement controverting the plaint averments. Based on the rival pleadings, the learned trial Munsif framed the necessary issues. The first plaintiff Subbulakshmi examined herself as P.W.1 and marked Ex.A.1 to Ex.A.9. The defendant Perumalsamy examined himself as D.W.1 and also examined six other witnesses on his side. No document was marked on the side of the defendant. After considering the evidence on record, the trial Court by judgment and decree dated 19.11.2008 granted the relief of permanent injunction in respect of the first schedule and the first item in the second schedule. Aggrieved by the same, the defendant Perumalsamy filed A.S.No.45 of 2008 before the Sub Court, Kovilpatti. Before the first appellate Court, the first plaintiff adduced additional evidence and marked Ex.A.10 to Ex.A.15. Since the defendant had pleaded that the suit items in respect of which the permanent injunction was granted were orally sold to him and since the other witnesses had also supported the said claim and since the plaintiffs failed to seek the relief of declaration, the first appellate Court concluded that till declaration is obtained by either party, the suit items for which the decree was granted will remain unused by both the parties. Challenging the same, the plaintiffs filed S.A.(MD) No.319 of 2010, while the defendant filed S.A.(MD)No.644 of 2010.

4. S.A.(MD)No.319 of 2010 was admitted on 09.04.2010 on the following substantial question of law:-

" When the suit is filed by the appellants / plaintiffs for injunction and without giving any finding regarding the possession, whether the lower appellate Court is right in passing a decree in the suit for injunction that both the parties should not enter into the suit property without getting declaration or the title to the suit property from the competent Court? "

5. S.A.(MD)No.644 of 2010 filed by the defendant Perumalsamy has however not been admitted till date.

6. The learned counsel on either side reiterated all the contentions projected in the respective memorandum of grounds. While



the learned counsel appearing for the plaintiffs / appellants in S.A.(MD)No.319 of 2010 called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgment and decree passed by the first appellate Court and restore the decision of the trial Court, the learned counsel appearing for the defendant prayed for complete dismissal of the suit itself.

7. I carefully considered the rival contentions and went through the evidence on record.

8. There is no dispute that the suit properties originally belonged to Ellammal. Ellammal had settled the suit first schedule in favour of Subbulakshmi vide settlement deed dated 19.09.1979. It is also however stated that there was an oral partition among the family members and the suit second schedule items were jointly allotted in favour of the plaintiffs. The second plaintiff is none other than the brother of the first plaintiff. The plaintiffs have marked a host of revenue documents indicating their possession over the suit property. The only stand of the defendant is that he had purchased the suit first schedule as well as the first item in the suit second schedule under two sale transactions for a consideration of Rs.8,000/- and Rs.20,000/- respectively. He would however claim that both were oral. To support his claim that he had purchased the property under such oral sales, he examined the other witnesses.

9. It is too well settled that when the property is valued more than Rs.100/-, only through a registered instrument title can be transferred. This Court cannot take note of any oral sale. On the side of the defendant not even a single document has been marked. On the other hand, the plaintiffs have adduced overwhelming evidence. The revenue records clearly show that the suit properties are standing in their names. That is why, the trial Court rightly granted relief in their favour. The first appellate Court failed to render any finding as to who is in possession of the suit property. Of course if the title of the plaintiffs is seriously questioned by the defendant, then without seeking the relief of declaration, a suit for injunction simplicitor cannot be maintained. But then, the defendant must place materials so as to cause a shadow of doubt on the plaintiffs' claim of title. In this case, the defendant concedes the original title of the plaintiffs. His only defence is that the plaintiffs have parted with their right and possession over the suit properties through oral transactions. Such a defence is intrinsically not believable. Therefore, the substantial question of law formulated in S.A.(MD)No.319 of 2010 is answered in favour of the appellants therein. The impugned judgment and decree passed by the first appellate Court is set aside and the decision of the trial Court is restored.



10. S.A.(MD)No.319 of 2010 is allowed. In view of the allowing of S.A.(MD)No.319 of 2010, S.A.(MD)No.644 of 2010 is dismissed. No costs. Consequently, M.P.(MD)No.3 of 2010 is closed.

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Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To:

1. The Subordinate Judge,
Kovilpatti.
2. The District Munsif,
Kovilpatti.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.C.SELVAKUMAR, Advocate (SR-6362[F] dated 16/02/2022)

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-6368[F] dated 16/02/2022)

S.A.(MD)Nos.319 & 644 of 2010
15.02.2022

SVS (CO)

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