



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD) No.562 of 2010

1.S.Raju (died)

2.R.Bethan ... Appellants/Respondents/Defendants

3.Perumal

4.Chandra

5.Punniyakodi

6.Alagammal @ Vanitha ... Appellants

(Appellants 3 to 6 were brought on record
as the Lrs of the deceased 1st appellant
vide order dated 17.03.2016)

v.

1.M.D.Raju (died) ... Respondent/Appellant/Plaintiff

2.R.Kaliakkal

3.R.Sukumar

4.R.Jeyakumar

5.R.Ponnammal

6.R.Saraswathi

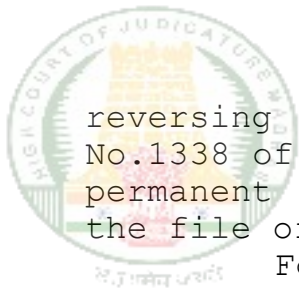
7.R.Gunasekaran

8.R.Elangovan ... Respondents

(Respondents 2 to 8 were brought on
record as the LRs of the deceased first
respondent vide order dated 17.03.2016)

Prayer :- Second Appeal filed under Section 100 of Civil Procedure
Code against the judgment and decree dated 25.08.2009 in A.S No.429
of 2004 on the file of the Principal Subordinate Judge, Dindigul

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reversing the judgment and decree dated 18.07.2001 made in O.S No.1338 of 1996 for the relief of declaration and possession and for permanent injunction regarding "A" schedule suit property alone, on the file of the First Additional District Munsif Court, Dindigul.

For Appellants : Mr.S.Vijayasanthi

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For Respondents : Mr.H.Lakshmi Shankar
for R2 to R4 and R6 to R8

R5 : Deceased

JUDGMENT

The defendants in O.S No.1338 of 1996 on the file of the First Additional District Munsif Court, Dindigul filed this second appeal. During the pendency of the appeal, the first appellant passed away. The second appellant is the son and the other legal heirs have also been brought on record. The suit was filed for the relief of declaration, recovery of possession, mesne profits and for the relief of damages also. The suit property is comprised in Survey No.476/6 in Pallapatti and measures an extent of 57 square meters. The case of the plaintiff is that this is a Natham property and that he has been in possession and enjoyment of the same from the year 1978 onwards and recognizing the same and overruling the objections raised by the first defendant, he was issued with Ex.A2 patta based on the proceedings of the Natham Special Tahsildar issued vide Ex.A1 dated 15.11.1993. On the other hand, the first defendant anchored his entire defence on the assignment patta dated 28.01.1954 (Ex.B1). Though the assignment patta states that an extent of four cents of land was assigned in favour of the first defendant's father in Survey No.476/2, it is not in dispute that it was later sub-divided. According to the defendants, the said property is covered by the order of assignment (Ex.B1) dated 28.01.1954. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as PW.1. Two other witnesses were examined on his side. Exs.A1 to A17 were marked. The second defendant examined himself as DW.1 and one Anthonysamy was examined as DW.2. Exs.B1 to B14 were marked. Advocate Commissioner was appointed and his reports and plan were marked as Exs.C1 to C4. Through the witnesses, three documents were also marked. After considering the evidence on record, the trial court by judgment and decree dated 18.07.2001 dismissed the suit. Challenging the same, the plaintiff filed A.S No.429 of 2004 on the file of the Principal Subordinate Court, Dindigul. He also filed I.A No.299 of 2007 for marking additional evidence. The plaintiff's request for adducing additional evidence was accepted and Ex.A18 (House Tax Receipt) and was allowed to be marked. The first appellate court by the impugned judgment and decree dated 25.08.2009 reversed the decision of the trial court and granted relief to the plaintiff in respect of the prayer for declaration and recovery of possession. However, the prayer for mesne profits and damages was negatived. Challenging the same, the defendants filed this second appeal.

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2.The second appeal was admitted on 05.07.2010 on the following substantial questions of law :

"1.Whether the lower appellate court is right in reversing the judgment and decree passed in O.S No.1338 of 1996 by appreciating Exs.A3 to A13 and Ex.A18 the tax receipts after the year of 1980?

2.Whether the lower appellate court is right in reversing the judgment and decree of the trial court based on the patta granted by the Tahsildar in favour of the plaintiff in the year 1993 when the settled proposition of law says that patta does not confer title over the property?

3.Whether the lower appellate court is right in holding that the plaintiff was in possession and enjoyment of the suit property based on the oral deposition of PW.3 when there is no iota of evidence produced before the trial court to prove his possession in the suit property ?

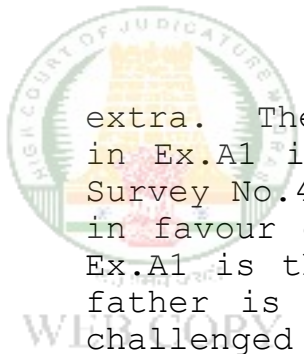
4.Whether the lower appellate court is right in holding that the suit properties are belonged to the plaintiff as per the exhibits A3 to A13 the tax receipts for the suit property when the Commissioner Report clearly says that the suit property is a vacant site which averment correlated with the Survey register ?

5.Whether the lower appellate court is right in decreeing the suit regarding the relief of declaration and for recovery of possession and for permanent injunction when the appellate court dismissed the relief of damages, past loss and future loss in respect of "A" Schedule of property as the plaintiff has failed to prove the same?"

3.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial court. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference. He prayed for dismissal of the second appeal.

4.I carefully considered the rival contentions and went through the evidence on record. There is no dispute that in the year 1952, the father of the first defendant namely Subban was assigned four cents of land in Survey No.476/2. But a measurement on ground clearly reveals that the assigned land was not only lying intact in

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extra. The categorical finding of the Natham Tahsildar in his order in Ex.A1 is that the land measuring 57 square meters comprised in Survey No.476/6 is lying distinctly and apart from what was assigned in favour of the first defendant's father. The further finding in Ex.A1 is that what was assigned in favour of the first defendant's father is comprised in Survey No.476/5. The defendants no doubt challenged Ex.A1 before the Revenue Divisional Officer, Dindigul. The appeal was dismissed. But thereafter the defendants have not mounted any challenge before the High Court. On the other hand, they filed a suit for declaration and recovery of possession in O.S No.1120 of 1993 before the Principal District Munsif, Dindigul. But the said suit was dismissed for default on 21.09.1994. While so dismissing, cost was imposed. The plaintiff recovered the same by filing an execution petition. From the fact that a suit for declaration of title and recovery of possession was filed and that the same was allowed to be dismissed for default and that no steps were taken for restoring the same, the court can presume under Section 114 of the Indian Evidence Act, 1872 that the plaintiff who filed the suit was not quite sure of his title. In the case on hand, by marking Exs.A1 and A2, the plaintiff had demonstrated his title over the suit property. On the contrary, there is absolutely no case made out by the defendants to show their title or possession over the suit property. That is why, the first appellate court rightly reversed the decision of the trial court and held in favour of the plaintiff. The substantial questions of law are answered against the appellants. The impugned judgment and decree passed by the first appellate court do not call for any interference. The second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

skm

To

- 1.The Principal Subordinate Judge, Dindigul.
- 2.The First Additional District Munsif, Dindigul.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-18206[F] dated 12/04/2022)

S.A. (MD) No.562 of 2010
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MGJ(02.05.2022) 4P 6C

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