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S.A.(MD)No.701 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.701 of 2010

and

M.P.(MD)No.2 of 2010

Periyannan

... Appellant / Respondent / Plaintiff

-Vs-

Sihappi Ammal

... Respondent / Appellant / Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Sub Court, Sivagangai dated 18.06.2010 made in A.S.No.31 of 2006 in reversing the judgment and decree of the District Munsif Court, Thirupathur, dated 27.01.2006 made in O.S.No.58 of 2000.

For Appellant	: Mr.T.S.Mohamed Mohideen
	for Mr.M.Mohanasundaram
For Respondent	: Mr.G.Mohan Kumar

JUDGMENT

The plaintiff in O.S.No.58 of 2000 on the file of the District Munsif Court, Thirupathur is the appellant in this second appeal.

2. The suit was filed for declaration that the suit property belongs to the plaintiff and for permanent injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the same. The defendant filed written statement controverting the plaint averments. The suit originally suffered a dismissal on 06.09.2002 on the ground that the plaintiff was not prosecuting the suit. Aggrieved by the same, the plaintiff filed A.S.No.12 of 2003 before the Sub Court, Sivagangai. By judgment and decree dated 12.08.2004, the matter was remanded. The plaintiff examined himself as P.W.1 and one Andiappan was examined as P.W.2. Ex.A1 to Ex.A15 were marked. The defendant examined herself as D.W.1 and one Rathinam was examined as D.W.2. One Chinnaiya was examined as D.W.3. But his evidence was later eschewed. Ex.B1 to Ex.B7 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C1 & Ex.C2. After considering the evidence on record, the trial court by judgment and decree dated 27.01.2006 decreed the suit as prayed for. Challenging the same, the defendant filed A.S.No.31 of 2006 before the Sub Court, Sivagangai. By the impugned judgment and decree dated 18.06.2010, the decision of the trial court was reversed and the appeal was



allowed and the suit was dismissed. Challenging the same, the plaintiff filed this second appeal. Though the second appeal was filed way back in the year 2010, only notice was ordered and it has not been admitted till date.

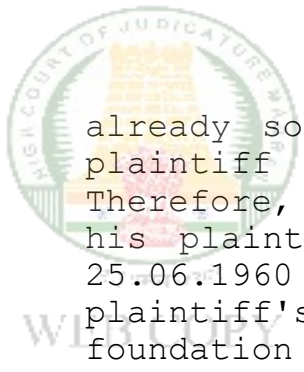
3. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to formulate the substantial question of law and admit this second appeal and take it up 'for disposal' later.

4. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law arises for consideration.

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

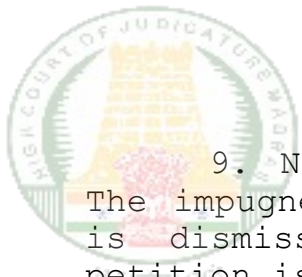
6. The suit property measures 4 cents of land and is comprised in Survey No.166/13 in Puthur Village, Nedumaram Group in Thiruppathur Taluk. The stand of the defendant was that the father of the plaintiff namely Chinnaiya Konar owned 9 cents of land in the said survey number and he retained 5 cents and sold the remaining 4 cents in favour of the defendant vide sale deed dated 25.06.1960. The trial court came to the conclusion that the due execution of the sale deed has not been proved. Such a conclusion was arrived at because the plaintiff examined one Andiappan said to be the attestor of Ex.B1-sale deed dated 25.06.1960. The first appellate court disagreed with the said reasoning by invoking Section 90 of the Indian Evidence Act, 1872. The first appellate court committed a clear error in invoking Section 90 of the Act because the said provision can be invoked only if the original document is marked. In this case, the defendant had marked only a certified copy. Though the first appellate court erred in invoking Section 90 of the Indian Evidence Act, I do not want to interfere with the impugned judgment and decree on that ground. This is because, a sale deed is not a document that requires to be attested. Only if a document is required by law to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution. Section 68 of the Indian Evidence Act, 1872 will not apply in the case of sale deed. It is not as if the defendant has projected the sale deed for the first time in the written statement. There was a running battle between the parties before the revenue authorities. The defendant and the plaintiff had been locked in litigation before the revenue authorities right from the year 1997. There were proceedings before the Thasildar, Thiruppathur, RDO, Devakottai & DRO, Sivagangai and also the Commissioner of the Land Administration, Chennai.

7. The specific case of the defendant was that the plaintiff cannot claim any title over the suit property because his father had



already sold the same to the defendant under Ex.B1 and that the plaintiff was also an eo nomine party to the said sale deed. Therefore, the plaintiff ought to have laid a proper foundation in his plaint questioning the validity of the said sale deed dated 25.06.1960 which according to the defendant was executed by the plaintiff's father. In the plaint, there is absolutely no foundation for the allegation of forgery. In fact, in the plaint, the plaintiff nowhere has made any reference to the said sale deed. On the other hand, he had alleged that the defendant had staked a claim over the suit property on the strength of documents that are forged and sham and nominal. Both allegations cannot go together. A forged document can never assume the character of sham and nominal document. Therefore, I have to necessarily sustain the contentions of the learned counsel appearing for the respondent and there is absolutely no foundation for the allegation that Ex.B1 is a forged document. Merely because P.W.2 who had attested Ex.B1 did not support the defendant, that would not result in disproving the said document. If as already pointed out if the document is required by law to be attested, then the burden would be on the defendant to examine the attesting witness to sustain the sale deed. But that is not the case here. The document in question is a sale deed and it is the plaintiff who has come to the Court. The defendant while cross-examining P.W.2 had clearly suggested to him that the plaintiff was his relative and that is why, he falsely deposed.

8. There is yet another aspect of the matter. One of the contentions urged by the plaintiff was that Ex.B1 does not contain any survey number. But when four boundaries are clear and tally with the suit property, omission to mention the survey number will not weaken or undermine the case of the defendant. The defendant had also marked Ex.B2 dated 24.10.1958. The defendant deposed that in Ex.B2 which also executed by the plaintiff's father, survey number had not been mentioned. The plaintiff never took a stand that Ex.B2 is also a forged document. When the authenticity of Ex.B2 has been challenged, the plaintiff must have taken steps to apply for the original document from the office of Sub Registrar and refer the same for the opinion of the hand writing expert. Such steps were not taken. Therefore, I come to the conclusion that the plaintiff has miserably failed to prove that Ex.B1 is a forged document. Of-course, the defendant had failed to mark the original document. This in my view will not weaken the defendant's case. The defendant is an illiterate lady. She had stated that it was her husband who had been dealing with the matters. Her husband was no more. Therefore, failure on the part of the defendant to file the original document cannot be put against her. Even though some of the reasons assigned by the first appellate court are incorrect, in as much as the defendant had proved her title over the suit property and since the suit property is also a vacant site, one must come to the conclusion that possession follows title.



9. No substantial question of law arises for consideration. The impugned judgment and decree are confirmed. The second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Sub Court, Sivagangai.
- 2.The District Munsif Court, Thirupathur.

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Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.T.S. MOHAMED MOHIDEEN, Advocate (SR-16988[F] dated 06/04/2022)

+1 CC to M/s.G. MOHANKUMAR, Advocate (SR-17352[F] dated 07/04/2022)

Judgment made in
S.A. (MD) No. 701 of 2010
06.04.2022

ss (CO)

TR(28.04.2022) 4P 7C