



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.718 of 2010

WEB COPY

R.Swaminathan

... Appellant / Appellant /
Plaintiff

-Vs-

K.Selvaraj

... Respondent / Respondent /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.18 of 2005 on the file of the Subordinate Judge, Pattukkottai dated 30.03.2007 confirming the judgment and decree passed in O.S.No.144 of 1999 on the file of the District Munsif Court, Pattukkottai, dated 03.02.2003

For Appellant : Mr.M.P.Senthil
For Respondent : Mr.N.Bala Krishnan
for Mr.V.Rama moorthy

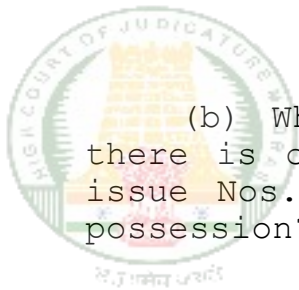
JUDGMENT

The plaintiff in O.S.No.144 of 1999 on the file of the District Munsif Court, Pattukkottai is the appellant in this second appeal.

2. The said suit was filed seeking the relief of declaration and permanent injunction. The respondent herein filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and two other witnesses on his side. Ex.A1 to Ex.A17 were marked. The defendant examined himself as D.W.1. Ex.B1 to Ex.B.27 were marked. As many as 8 court exhibits were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 03.02.2003 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.18 of 2005 before the Sub Court, Pattukkottai. By judgment and decree dated 30.03.2007, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. It was admitted on 18.09.2012 on the following substantial questions of law:-

“(a) Whether revenue records will prevail over, especially, when the title deed is in existence?

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(b) Whether throwing burden on the appellant is correct when there is claim made by the respondent especially when there is an issue Nos.3 & 4 with regard to title and claim by way of adverse possession?"

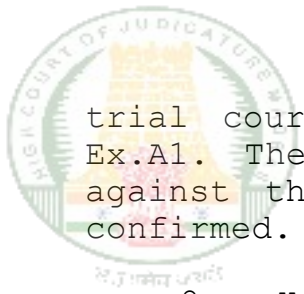
3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and decree the suit as prayed for.

4. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

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

6. The suit property measures 27 cents of land and it is comprised on the eastern side of Survey No.43/14 measuring total extent of 67 cents. The case of the appellant is that the suit property was originally purchased by one Venkatrama Iyer under Ex.A2 dated 06.07.1960. One of the purchasers was Palaniyandi Thevar. There was a oral partition among four purchasers and the suit property was allotted in his favour. Palaniyandi Thevar had two daughters namely Ramamirtham and Saroja. Saroja was occupying 27 cents of land on the eastern side, while Ramamirtham was in possession of 13 cents of land on the western side. The property enjoyed by Saroja was sold to the plaintiff under Ex.A1 dated 05.05.1999 and Ex.A3 dated 15.07.1998. Since the defendant was staking rival claim, the plaintiff was constrained to institute the said suit.

7. Though apparently the contentions of the plaintiff appear persuasive, as rightly pointed out by the learned counsel appearing for the respondent, the present R.S.No.43/14 which measures 67 cents of land was originally in two separate parts namely R.O.R.No.43/14 and R.O.R.No.43/15. R.O.R.No.43/14 measured 27 cents, while R.O.R.No.43/15 measured 40 cents. Ex.B26 is the old FMB marked by the defendant. Its authenticity is beyond dispute. From a perusal of old FMB (Ex.B26), one can notice that R.O.R.No.43/14 lay on the eastern side, while R.O.R.No.43/15 lay on the western side. R.O.R.No.43/14 measured 27 cents, while R.O.R.No.43/15 measured 40 cents. These two R.O.R numbers were merged into R.S.No.43/14 (present one). Ex.A1 under which the plaintiff's claims is referable to the land comprised in R.O.R.No.43/15 and not R.O.R.No.43/14. The suit property even according to the description of the plaintiff is on the eastern end. The eastern end falls within the old R.O.R.No.43/14. That is why, the courts below correctly held that the plaintiff failed to establish any right or claim over the suit property. The plaintiff also did not file any petition before the



trial court for identifying the property purchased by him under Ex.A1. Therefore, the substantial questions of law are answered against the appellant and the decisions of the court below are confirmed.

8. However, I must notice that the defendant herein filed a declaration suit against the plaintiff's father for the entire 67 cents of land comprised in the present R.S.No.43/14. He chose to withdraw the said suit for whatever reason. However, the courts below have chosen to grant the relief of declaration in favour of the defendant in respect of the entire 67 cents of land in the present R.S.No.43/14. This in my view is totally unwarranted. The defendant did not file any counter claim. The suit was filed only by the plaintiff over 27 cents of land. Therefore, the findings and declaration given in favour of the respondent in respect of the entire 67 cents stand vacated. The issues are left open. What I affirm is only that the present plaintiff has no right or title or interest over 27 cents of land in the old R.O.R.No.43/14 which is a part of the present R.S.No.43/14 on the eastern side. Liberty is given to the plaintiff / appellant to institute a fresh suit to establish his right or claim over the property covered under Ex.A1.

9. With this liberty to the appellant, the second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Subordinate Judge, Pattukkottai.
- 2.The District Munsif, Pattukkottai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1 C.C. TO M/S.M.P.SENTHIL, Advocate, S.R.No.8022.

Judgment made in
S.A.(MD)No.718 of 2010
22.02.2022

USK/21.03.2022/3P/6C

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