



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.918 of 2010

WEB COPY

1.Rengan

2.Subramanian ... Appellants / Respondents / Plaintiffs

-Vs-

Kunju Pillai (died)

1.Vellaisamy ... Respondents / Appellants / Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.51 of 2008, dated 17.11.2009 on the file of the learned Sub Court, Pudukkottai reversing the judgment and decree in O.S.No.29 of 2003, dated 07.11.2007 on the file of the learned Principal District Munsif Court, Pudukkottai.

For Appellants : Mr.V.S.Badrinath
For Respondent : Mr.S.Deenadayalan

JUDGMENT

The plaintiffs in O.S.No.29 of 2003 on the file of the Principal District Munsif Court, Pudukkottai are the appellants in this second appeal.

2. The said suit was filed for declaration and permanent injunction. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The second plaintiff Subramanian examined himself as P.W.1. Three other witness were examined on his side. Ex.A1 to Ex.A6 were marked. The second defendant Vellaisamy examined himself as D.W.1 and one Jeganathan was examined as D.W.2. Ex.B1 to Ex.B5 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 07.11.2007 decreed the suit as prayed for. During the pendency of the suit, the first defendant had passed away. The second defendant who is her son filed A.S.No.51 of 2008 before the Sub Court, Pudukkottai. The first appellate Court by the impugned judgment and decree dated 17.11.2009 reversed the decision of the trial court and allowed the appeal and dismissed the suit. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 09.12.2010 on the following substantial questions of law:-

"1.Whether the lower appellate court has failed to frame necessary points for consideration?

2. Whether the lower appellate court rendered a perverse



finding without considering the sale deeds relied on by the appellants / plaintiffs, which were anterior to the filing of the suit?"

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 passed by the first appellate court and restore the decision of the trial court.

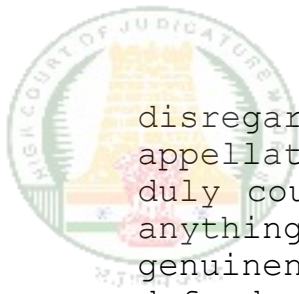
4. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

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

6. The suit property measuring 8 ½ cents formed part of a larger extent measuring 34 cents. It belonged to two brothers namely Piraman and Tholan. The entire 34 cents of land was allotted to Piraman in the oral partition between them. Piraman had four children namely Rengan, Karuppan, Marudan and Ponnan. Each of them was allotted 8 ½ cents. The property allotted to Rengan is located on the south east portion of the said larger extent of the property. After Rengan was allotted the said 8 ½ cents, he sold 4 cents of land on the eastern side to one Periannan on 02.06.1976. The said document had been marked as Ex.A1. A reading of its recitals would indicate that the said sale was made for raising funds to purchase the property covered under Ex.A6. Interestingly, Ex.A6 was executed by none other than the defendants Kunju Pillai and Vellaisamy in favour of Rengan. In the cross examination also, it was admitted by Vellaisamy that the consideration for execution of Ex.A6 was received some six years earlier. Seeniammal wife of Rengan and mother of the second plaintiff re-purchased 2 cents out of the said 4 cents from Periannan on 15.07.1981. The said document was marked as Ex.A3. Periannan had sold the remaining portion to one Selvam on the very same date and the said document was marked as Ex.A2. The second plaintiff Subramanian purchased the remaining two cents of land also from Selvam under Ex.A4 dated 07.06.1995. Thus, whatever was alienated by Rengan for purchasing the property covered under Ex.A6 was re-purchased later. Since the defendants staked rival claim based on revenue documents, the present suit for declaration and injunction came to be instituted. The trial court was satisfied that the plaintiffs have established their title over the suit property and consequently, decreed the suit as prayed for. The first appellate court reversed the same after taking into account Ex.A5 & Ex.B1:-

Ex.A5 is the extract of 'A' register that stands in the name of the first plaintiff Rengan. There is overwriting in

Ex.A5 and therefore, the first appellate court chose to



disregard the said exhibit. The approach of the first appellate court cannot be accepted. The overwriting has been duly counter signed by the authority concerned. More than anything else, the defendants did not challenge the genuineness of Ex.A5 in their cross examination. When the defendants themselves have not questioned the validity of Ex.A5, the first appellate court ought not to have doubted its validity.

7. The first appellate court also chose to accord priority to Ex.B1. I went through the contents of Ex.B1. It is a computer generated patta. Of-course, it stands in the name of Kunjupillai in respect of the property comprised in survey No.139 /12 in Kattathi Village, Alangudi Taluk, Pudukkottai District. It is a stand alone document. The defendants have not marked any other antecedent document. When the plaintiffs have marked the registered sale deeds right from the year 1976 onwards, the same ought to have been given precedence over the revenue document. It is well settled that on the strength of a revenue document, one cannot claim title when the other side is able to produce the registered title document that is earlier in point of time. The approach of the first appellate court is clearly erroneous.

8. The first appellate court had also observed that Ex.A6 is an irrelevant document. It is true that Ex.A6 does not bear relation to the suit property. But then, as rightly pointed out by the learned counsel appearing for the appellants, it does shed a lot of light on the surrounding circumstances. In Ex.A1 itself, it has been mentioned that a portion of the suit property is being sold to raise funds for purchasing the property covered under Ex.A6. Ex.A6 was executed by none other than the defendant themselves. Therefore, the said document could not have been ignored as irrelevant. The first appellate court has again gone wrong in eschewing Ex.A6 out of consideration.

9. I therefore answer the second substantial questions of law in favour of the appellants. It is not necessary to answer the first substantial question of law. The impugned judgment and decree passed by the first appellate court is set aside. The decision of the trial court is restored. The second appeal is allowed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Sub Judge, Pudukkottai.

2.The Principal District Munsif, Pudukkottai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.V.S.BADRINATH, Advocate (SR-11607[F] dated
11/03/2022)

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