



S.A.(MD) No.870 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.870 of 2012

Felix Rojario

... Appellant/Respondent/
Plaintiff

Vs

1.Shanthi

2.Gnanamuthu

... Respondents/Appellants/
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 03.08.2012 made in A.S.No.13 of 2011 on the file of the Sub Court, Pudukkottai, reversing the judgment and decree dated 29.11.2010 made in O.S.No.224 of 2008 on the file of the District Munsif Court, Pudukkottai.

For Appellant : Mr.N.Balakrishnan

For Respondents : Mr.S.Anand Chandrasekar



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J U D G M E N T

The plaintiff in the suit is the appellant in the second appeal. He filed a suit for declaration of title and injunction in respect of suit 'A' and 'B' Schedule properties. Suit 'A' Schedule property is a punja land with an extent of 91 ares in S.No.462/3 in Pudukkottai Viduthi Village. Suit 'B' Schedule property is a 4.5 ares of land situated in the very same survey number on the eastern side of the 'A' Schedule property.

2. According to the appellant/plaintiff, the suit property originally belonged to his father viz., Arockiyasamy @ Arockiam. He sold 12 cents of suit property viz., 'B' Schedule to Ceylon refugees for construction of houses for their residence. It was averred in the plaint that though the plaintiff's father sold 12 cents for construction of house for Ceylon refugees, the alienees had never taken possession of the properties and possession of the entire suit property remained with his father. The appellant/plaintiff also claimed that the suit 'A' Schedule property with an extent of 91 ares was settled by his father under a settlement deed dated 27.02.2008 in his favour.



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3. It was further averred in the plaint that the 1st respondent herein purchased suit 'B' Schedule property under a sale deed dated 18.09.1997 from the alienees of the appellant's father. Though the 1st respondent purchased the suit 'B' Schedule property, there was no mutation of revenue records and it continued in the name of the appellant's father. Further, it was claimed in the plaint that the respondents made a request to the plaintiff to sell the remaining portion of the suit properties to them and the same was refused. Aggrieved by the same, the respondents tried to interfere with the possession of the appellant and consequently, the appellant was constrained to file the present suit for declaration and injunction.

4. The 1st respondent/1st defendant filed a written statement and the same was adopted by the 2nd respondent/2nd defendant. In their written statement, the respondents denied the title and possession of the appellant. It was specifically stated in the written statement that the 1st appellant purchased 12 cents of suit property viz., suit 'B' Schedule from Velayutham and others under a sale deed dated 18.09.1997 and it was also claimed that



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the respondents had been in possession and enjoyment of the said property right from the date of sale.

5. It was also further stated in the written statement that the suit 'A' Schedule property was also sold by the plaintiff's father to third parties and the plaintiff has no possession or enjoyment over the suit 'A' Schedule properties. It was also stated that the respondents purchased the entire suit property from the persons who have purchased the remaining suit properties from the plaintiff's father under a sale deed dated 09.07.2008 for valid consideration. It was also claimed by the respondents that they have raised eucalyptus trees in the suit properties and they have been in possession and enjoyment of the suit property.

6. On these pleadings, the parties went to the trial and the trial Court, on consideration of oral and documentary evidences, came to the conclusion that the plaintiff's father sold the suit properties to third parties and hence, the plaintiff has no title over the suit properties. As far as 12 cents of properties in suit 'B' Schedule is concerned, the trial Court held that based



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on Exs.B.81, B.82, B.83 and B.84, the 1st respondent/1st defendant has proved her title over the same. However, the title set up by the respondents in respect of the 'A' schedule property was negated. The prayer for declaration in respect of both the schedules of suit properties were negated by the trial Court on the ground that the plaintiff's father sold the suit properties to third parties. However, in respect of relief of injunction, the trial Court found that no injunction can be granted against true owner viz., the 1st respondent in respect of the 'B' Schedule. As far as 'A' Schedule is concerned, the trial Court found that the appellant/plaintiff proved his possession over the 'A' Schedule property notwithstanding the sale in favour of the third parties. Consequently, it was held that the plaintiff was entitled to injunction in respect of the 'A' Schedule property. However, in the operative portion of the judgment, the trial Court got confused with the description of 'A' Schedule and 'B' Schedule mentioned in the plaint and passed a judgment granting relief of injunction alone in respect of 'B' Schedule property. Though the trial Court found that 1st respondent proved his title over the 'B' Schedule property and consequently, suit for injunction would not lie against the true owner, in the operative portion of the



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judgment, contrary to its finding, granted a decree for injunction in respect of 'B' Schedule property. Likewise, though the trial Court found based on his possession, the appellant/plaintiff is entitled to the relief of injunction alone in respect of suit 'A' Schedule property, in the operative portion of the judgment, the suit was dismissed in respect of the entire 'A' Schedule.

7. Aggrieved by the said judgment, the respondents/defendants filed an appeal in A.S.No.13 of 2011. The appeal was filed by the respondents challenging the findings found in the trial Court's judgment in respect of the suit 'A' Schedule property that the appellant/plaintiff is entitled to the relief of injunction. Though in the operative portion of the judgment, the suit was dismissed in respect of suit 'A' Schedule property, in view of the adverse finding against the respondents in respect of suit 'A' Schedule property, the appeal was filed. The learned appellate Judge held that the appellant/plaintiff is not entitled to any injunction in respect of suit 'A' Schedule property after his father sold the entire property to the third parties. Therefore, the first appellate Court held that the injunction granted by the trial Court in respect of the suit 'A' Schedule property is liable to be



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reversed. But unfortunately, the first appellate Court failed to consider that in the operative portion of the judgment, the trial Court dismissed the entire suit in respect of 'A' Schedule property. Aggrieved by the said judgment passed by the first appellate Court, the plaintiff/appellant has come up by way of this second appeal.

8. On the basis of the pleadings of the parties, the judgment rendered by both the Courts below and also the arguments made by the learned counsel on either side, the following substantial questions of law arise for consideration in this appeal:

“(i) Whether the judgment and decree passed by the trial Court contrary to its finding are sustainable in law? and

(ii) Whether the first appeal filed by the respondents herein as against the adverse findings against them is maintainable?”

9. The learned counsel for the appellant submits that the judgment passed by the Courts below are vitiated by error apparent, as there cannot be



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a decree contrary to the findings rendered in the judgment. The learned counsel for the appellant, by taking this Court to the decree passed by the trial Court, also submitted that the suit was dismissed in respect of suit 'A' Schedule, but the appellate Court assumed that the suit was decreed in respect of 'A' Schedule and allowed the appeal. The learned counsel had taken me to the findings rendered by the trial Court and submitted that the final operative portion of the judgment passed by the trial Court is contrary to its own findings in the judgment.

10. The learned counsel for the respondents, on his part, submitted that though the appellate Court observed that the first appeal filed by the respondents was in respect of 'A' Schedule property alone, the perusal of the grounds of the first appeal would suggest that the appeal was preferred in respect of the 'A' Schedule as well as the 'B' Schedule. Therefore, the first appellate Court ought not to have confined its consideration in respect of the 'A' Schedule of the suit property.



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11. It is the submission of the learned counsel for the respondents that the first appellate Court ought to have considered the first appeal filed by the respondents in respect of the relief granted regarding 'B' Schedule also.

12. Heard the arguments of both the counsels on the substantial questions of law framed and perused the records.

13. Reading of the trial Court's judgment would make it clear that on facts, the trial Court has given a finding that the appellant/plaintiff failed to prove his title over the suit 'A' Schedule property as well as 'B' Schedule property. The trial Court also has given a finding that the 1st respondent proved her title over the suit 'B' Schedule property. After holding that the suit for injunction filed by the appellant against the real owner in respect of the suit 'B' Schedule property was not maintainable, in the operative portion of the judgment, a decree was passed in respect of 'B' Schedule property by mistake. The trial Court also found that the appellant/plaintiff proved his possession over suit 'A' Schedule property. However, in the operative portion, by mistake, the suit was dismissed in its entirety in respect of 'A'



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Schedule property. So the mistake committed by the trial Court is apparent on the face of the record.

14. It is settled law there cannot be a decree contrary to the findings rendered in the judgment. In the case on hand, the operative portion of the judgment is contrary to the own findings of the trial Court. When the respondents/defendants aggrieved by the adverse findings filed an appeal, the first appellate Court, which had an opportunity to set right the mistake committed by the trial Court by re-appreciating the evidence, unfortunately assumed the appeal filed by the respondents/defendants was only in respect of suit 'A' Schedule property and set aside the decree for injunction granted in respect of suit 'A' Schedule property. It is pertinent to note that in fact, there is no decree for injunction in respect of 'A' Schedule property to enable the first appellate Court to set it aside. So the judgment passed by the first appellate Court is also vitiated by erroneous approach to the whole issue. Therefore, in view of the settled position of law that the operative portion of a judgment cannot go contrary to the earlier findings in the judgment, this Court feels that it would be appropriate to set aside the



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judgments passed by both the Courts below and remand the matter back to the file of the trial Court for fresh consideration on the basis of the evidences already available on record. The mistake that had crept in was due to misunderstanding by the trial Court with regard to suit 'A' and 'B' Schedule properties. When a judgment is rendered based on mistaken belief with regard to description of property, it is appropriate for the trial Court to redo the appreciation of evidence afresh with correct understanding of description of properties. In view of error apparent on the face of record, both the substantial questions of law are answered in favour of the appellant and the matter is liable to be remanded for fresh consideration.

15. Accordingly, the judgment and decree passed by both the Courts below are set aside and the matter is remanded back to the file of the Principal District Munsif, Pudukkottai, for fresh consideration on the basis of the evidence already available on record. It is made clear that the judgments of the Courts below are set aside only due to the error apparent on the judgments of the Courts below as discussed earlier and there is no necessity for the parties to lead any fresh evidence. Having regard to the



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year on which the suit was presented, this Court is inclined to issue a direction to the trial Court to dispose of the suit within a period of three months from the date of receipt of a copy of this judgment.

16. Accordingly, this Second Appeal is allowed with the above terms. The Registry is directed to send the original records to the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

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To

- 1.The Sub Judge,
Pudukkottai.
- 2.The Principal District Munsif,
Pudukkottai.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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