



S.A(MD)No.536 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.02.2022

DELIVERED ON : 07.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.536 of 2005

Arumugam (Died)

... Plaintiff/
Respondent/
Appellant

2.Sumathi

3.Mariammal

4.Rajalakshmi

5.Seethammal

6.Jeyalakshmi

... Proposed Appellants

Vs

1.Muniasamy Naidu

2.Rajagopal

3.Ravi Naidu

4.Krishnan

5.Murugan (Died)

6.Munsun @ Muniasamy (Died)

7.A.Selvi

8.A.Rajalakshmi

9.K.Muniasamy

10.A.Rajeshkannan

... Defendants/
Appellants 1 to 2, 4 to 11/
Respondents

11.M.Chithra

12.M.Rajeshwari



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13.M.Manikandan
14.M.Rengaraj
15.M.Prema
16.M.Hariharajegan
17.F.Ramya
18.S.Gayathri

... Proposed Respondents

(Appellant Nos.2 to 6 are brought on record as legal heirs of deceased sole appellant as per the order of Court, dated 06.10.2015 made in M.P(MD)Nos.1 to 3 of 2014 in S.A(MD)No. 536 of 2005)

(Respondent Nos.11 to 14 are brought on record as legal heirs of deceased 5th respondent vide Court order, dated 12.02.2020 made in C.M.P(MD)Nos.880 to 882 of 2020 in S.A(MD)No.536 of 2005)

(Respondent Nos.15 to 18 are brought on record as legal heirs of deceased 6th respondent vide Court order, dated 12.02.2020 made in C.M.P(MD)Nos.883 to 885 of 2020 in S.A(MD)No.536 of 2005)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.30 of 2004, dated 19.10.2004 on the file of the Sub Judge, Kovilpatti reversing the judgment and decree made in O.S.No.15 of 2003, dated 07.06.2004 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

For Appellants : Mr.H.Arumugam
for Mr.S.Kumar

For R-1 to R-4 & R-7 to R-18 : Mr.R.Devaraj
For R-5 & R-6 : Died



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JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff had filed O.S.No.15 of 2003 before the District Munsif Cum Judicial Magistrate Court, Vilathikulam for the relief of declaration of title and permanent injunction. The suit was decreed as prayed for by the trial Court. The defendants filed A.S.No.30 of 2004 before the Sub Court, Kovilpatti. The learned Subordinate Judge reversed the judgment and appeal of the trial Court and dismissed the suit. As against the same, the plaintiffs have filed the above Second Appeal.

3. The plaintiffs have contended that suit schedule properties originally belonged to one Narayanasamy Naidu. He had executed a registered gift deed in favour of his daughter, Annammal and son-in-law Gurusamy Naidu under Exhibit A1, dated 29.08.1956. The said Narayanasamy Naidu has executed a sale deed with regard to another property in favour of his daughter, Annammal under Exhibit A2, dated 12.09.1980. The properties covered under the above said two documents



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were sold by Annammal to the plaintiff under Exhibit A3 on 21.12.1998.

The patta was standing in the name of Annammal under Exhibit A6 and it was mutated in the name of the plaintiff under Exhibit A4. According to the plaintiff, his vendor, Annammal was paying tax to the suit survey number. The plaintiff has further contended that the defendants have no right whatsoever, but they are claiming title and attempting to disturb his possession over the suit schedule properties. Hence, the present suit for declaration of title and permanent injunction.

4. The defendants filed a written statement disputing Exhibits A1 and A2 documents and the consequential sale deed in favour of the plaintiffs. The defendants further contended that the suit schedule properties originally belonged to one Narayanasamy Naidu, (son of Seetharam Naidu) based upon Exhibits B1 and B2 sale deed. After his death, it devolved upon his son Seetharam Naidu and after the death of Seetharam Naidu, it devolved upon the sons of Seetharam Naidu, namely, the defendants herein. The defendants have further contended that a joint patta has been issued in the name of the legal heirs of Narayanasamy Naidu under Exhibit A3 in Patta No.72. Without issuance of any notice to the patta holders, separate patta



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has been issued in the name of the plaintiff's vendor, namely, Annammal and based upon the said patta, Annammal has alienated the suit schedule properties in favour of the plaintiffs. Hence, the plaintiffs will not be entitled to the suit schedule properties.

5. The trial Court after perusal of the oral and documentary evidence arrived at a finding that the plaintiffs have established their title and possession over the suit schedule properties and granted a decree in favour of the plaintiffs. The trial Court on a thorough analyzes of the revenue records arrived at the above said findings.

6. The First Appellate Court on re-appreciation of oral and documentary evidence arrived at a finding that plaintiff has not established his title. The First Appellate Court has carefully analyzed the boundary recitals in Exhibits A1 and A2 sale deed and the parent document, namely, Exhibit B6. The boundary recitals in the above said documents of the plaintiffs were compared with the boundary recitals of the plaint schedule property and the First Appellate Court arrived at a finding that the plaintiff has not established his title to the suit schedule properties. The First



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Appellate Court further held that the mutation of revenue records in favour of Annammal will not confer any title upon the plaintiffs. The First Appellate Court further found that the defendants have established their title by relying upon Exhibits B1 and B2 sale deeds standing in the name of the defendants' predecessor in title. Based upon the said findings, the First Appellate Court arrived at a conclusion that the plaintiffs have not established their title and dismissed the suit. As against the same, the present Second Appeal has been filed.

7. The above Second Appeal was admitted on the following substantial questions of law:

"(1) Whether the lower Appellate Court erred in reversing the well considered judgment of the trial Court without reference to the recitals in Exhibits B1, B2 and B6?"

"(2) Whether the lower Appellate Court is right in dismissing the suit when the patta is in the name of the appellant and it establishes prima facie title as per patta passbook Act?"

8. The learned Counsel for the appellants had contended that the title



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to the plaintiff over the suit schedule properties should not be doubted on the basis of mere discrepancy in the boundary recitals. He further contended that Exhibits A1 and A2 of the year 1956 and 1980. On the other hand, the boundary recitals of the defendants' document are of the year 1921 and 1928 and hence, naturally the boundary aspects would have changed during the said period. Hence, based upon the discrepancy in the boundary recitals, the plaintiffs cannot be non suited. The learned Counsel for the appellants have further contended that individual patta has been granted in favour of the plaintiff's vendor Annammal under Exhibit A6. Thereafter, the plaintiff's name has been mutated in the revenue records under Exhibit A4. The plaintiff's vendor, namely, Annammal was also issued with a patta during UDR proceedings under Exhibit A7, dated 14.08.1985. The plaintiff's vendor has paid tax receipts under Exhibit A8 series. Hence, the learned Counsel for the appellants had contended that the plaintiffs have established their title and possession over the suit schedule properties. The First Appellate Court has misdirected itself by wrongly interpreting the boundary recitals in Exhibits A1, A2 and A3 and has arrived at an erroneous finding. Hence, he prayed for allowing the Second Appeal.



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9. Per contra, the learned Counsel for the respondents had contended that the trial Court has not properly appreciated the registered documents in favour of the plaintiff and the defendants. Instead the trial Court concentrated more upon the revenue records standing in the name of the plaintiff as well as the defendants. Relying upon the revenue records, the trial Court has granted a decree in favour of the plaintiff. Even though the trial Court has found that the four boundaries have not been properly mentioned in the document, it has proceeded to grant a decree in favour of the plaintiff. On the other hand, the First Appellate Court compared the boundary recitals in Exhibits A1 to A3 and Exhibits B1, B2 and B6 and has arrived at a correct finding that the plaintiff has not established his title over the suit schedule properties. Hence, he prayed for dismissal of the Second Appeal.

10. I have given an anxious consideration to the submissions made on either side.

11. According to the plaintiff, one Narayanasamy Naidu son of Gurusamy Naidu was the original owner of the suit schedule properties. The



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said Narayanasamy Naidu has executed Exhibit A1 gift deed in favour of his daughter and son-in-law. Thereafter, he has executed a sale deed in favour of his daughter under Exhibit A2. The properties covered under Exhibits A1 and A2 have been purchased by the plaintiff under Exhibit A3. Thus, the plaintiff claims title based upon Exhibits A1 to A3. On the other hand, the defendants claimed that their grand-father owned the said schedule property based upon Exhibits B1 and B2 sale deeds and thereafter, it devolved upon them. The defendants relied upon Exhibit B4 patta which stands in the name of the defendants' predecessor in title. The defendants also relied upon Exhibit B3 patta passbook.

12. The only issue that arises for consideration is whether the plaintiff has established his title to the suit schedule properties based upon gift deed and Exhibits A2 and A3 sale deeds.

13. Exhibit B6 is the parent document of Narayanasamy Naidu, who is the vendor in Exhibits A1 and A2. The said sale deed is dated 06.07.1951 which is marked as Exhibit B6 on the side of the defendant. Under the said document, the predecessor in title of the plaintiffs have purchased the suit



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schedule properties. As per the boundary recitals in the said document, the property purchased by Narayanasamy Naidu lies to the East of North-South pathway. The said Narayanasamy Naidu has executed Exhibit A1 gift deed in favour of his daughter. He has also executed Exhibit A2 sale deed in favour of his daughter. In both Exhibits A1 and A2, the Western boundary is the North-South pathway. However, when the beneficiary under Exhibits A1 and A2 (Annammal) executed Exhibit A3 in favour of the plaintiff, the pathway is shown as the Eastern boundary (i.e) the property is located West of North-South pathway. Hence, the boundary recitals in Exhibits A1, A2 and B6 do not tally with Exhibit A3 sale deed in favour of the plaintiff. It is not the question of a mere discrepancy in the boundary recitals, but a complete change of lie and location of the property.

14. The defendants have relied upon Exhibits B1 and B2 sale deeds standing in the name of their grand-father. As per the said document, namely, B1, Narayanasamy Naidu. (Son of Seetharam Naidu) has purchased a property which is located West of North-South pathway. Under Exhibit B2, West of Exhibit B1 property has been purchased. Exhibits B1 and B2 are of the year 1921 and 1928 respectively. Admittedly, they are anterior to



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Exhibit B6 and Exhibits A1 to A3. A comparative analysis of the competitive documents of the plaintiff and the defendants will clearly show that plaintiff has not established his title over the suit schedule properties. Exhibit A3 sale deed does not reflect the property covered under Exhibits A1, A2 and Exhibit B6.

15. The trial Court without analyzing the registered documents on the side of the plaintiff and the defendant has granted a decree in favour of the plaintiff, based upon revenue records. In fact in paragraph No.9, the trial Court has found that the four boundaries do not tally, but that will not be a ground to non suit the plaintiff. However, the First Appellate Court after analyzing the registered documents has arrived at a finding that the plaintiff has not established his case.

16. In view of the above said discussion, both the substantial questions of law are answered against the appellant. The judgment and decree of the First Appellate Court are confirmed. Therefore, the Second Appeal stands dismissed. No costs.



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Note :

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To

- 1.The Sub Judge,
Kovilpatti.
- 2.The District Munsif cum Judicial Magistrate Court,
Vilathikulam.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

btr

Judgment made in
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