



SA(MD)No.675 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

SA(MD)No.675 of 2022
and
CMP(MD)No.9816 of 2022

Henry Albert
Rep. by his Power Agent
Mr.Sivakumardas

... Appellant

versus

1. Ananthajothi
2. N.Maripandi

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 06.08.2019 passed in A.S.No.5 of 2017 on the file of the learned Principal Sub Judge, Tirunelveli, confirming the Judgment and Decree dated 19.10.2016 passed in O.S.No. 219 of 2011 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.G.Prabhu Rajadurai

For R2 : Mr.H.Arumugam



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JUDGMENT

This Second Appeal is filed against the Judgment and Decree dated 06.08.2019, made in A.S.No.5 of 2017 on the file of the learned Principal Sub Judge, Tirunelveli, confirming the Judgment and Decree dated 19.10.2016, made in O.S.No.219 of 2011 on the file of the Principal District Munsif Court, Tirunelveli.

2. The first defendant in O.S.No.219 of 2011 is the appellant herein. The plaintiff in O.S.No.219 of 2011 is the second respondent herein. The second defendant in O.S.No.219 of 2011 is the first respondent herein.

3. The suit in O.S.No.219 of 2011 was filed by the second respondent/plaintiff before the Principal District Munsif Court, Tirunelveli, seeking the relief of declaration and permanent injunction in respect of the suit property in S.No.757/3, to an extent of 0.94.50 hectare, equal to 2.34 Acres comprised in old Patta No.230 and New Patta No. 1620 at Kulavanigarapuram Village, Palayamkottai Taluk, Tirunelveli District.

<https://www.mhc.tn.gov.in/judis>



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4. After considering the oral and documentary evidence, the trial Court, by Judgment and Decree dated 19.10.2016 decreed the suit in favour of the plaintiff. Aggrieved over the same, the defendants filed an appeal suit before the Principal Sub Court, Tirunelveli, in A.S.No.5 of 2017. The First Appellate Court also, by Judgment and Decree dated 06.08.2019, dismissed the appeal suit, by confirming the decree passed by the trial Court. Aggrieved over the concurrent findings of the Courts below, the appellant/first defendant has filed the present Second Appeal on the following substantial questions of law:

(i) Whether the Courts below is correct in law in interpretation of the decree passed in O.S.No.75 of 1952 and marked as Ex.B3 when the decree clearly denotes the suit property?

(ii) Whether the Courts below are correct in law in placing the burden upon the defendants to prove the title of the suit property particularly when it is for the plaintiff to show the title?

(iii) Whether the Courts below are correct in law in overlooking the fact that the plaintiff failed to prove the Will marked as Ex.A25 in the manner known to law?



5. The learned counsel appearing for the appellant submits that the suit schedule property in Survey No.757/3 was the subject matter of the suit in O.S.No.75 of 1952. The suit in O.S.No.75 of 1952 was decreed on a compromise memo and the suit schedule property was allotted to his vendors/defendants 1 to 3 in O.S.No.75 of 1952. The appellant purchased the property from the defendants 1 to 3 in O.S.No.75 of 1952, by way of a registered sale deed dated 26.03.2002. After the purchase, the patta was also transferred in his name and the revenue records also stand in his name. However, the Courts below, based on the Will dated 06.02.1990, which was marked as Ex.P25, granted the decree in favour of the plaintiff. But, the original Will was not placed before the Court and the Will was not proved in the manner known to law. Therefore, the Courts below failed to consider the decree passed in O.S.No.75 of 1952, which was also marked as Ex.D3.

6. The learned counsel appearing for the second respondent/plaintiff submits that the plaintiff has proved his title through registered sale deeds Ex.A2, A3 and A5. The plaintiff has also proved the Will dated 06.02.1990, which was marked as Ex.A25, by examining PW.2 and he has also produced a certified copy of the Will before the



trial Court. He further submits that when the Will dated 06.02.1990 is a registered one, the non-production of original Will is not fatal to the case of the plaintiff. He further submits that the first defendant has taken a stand as if the suit schedule property in Survey No.757/3 was the subject matter of the suit in O.S.No.75 of 1952. But, the suit property in O.S.No. 75 of 1952 was not the subject property of the present suit. Hence, the defendants have no right over the suit schedule property.

7. This Court considered the rival submissions made and also perused the materials available on record.

8. The case of the plaintiff is that the suit property originally belonged to one Nambi Konar and Subbiah Konar comprised in Patta No. 230. The legal heirs of Nambi Konar and Subbiah Konar sold the property to one Nabmi Reddiyar, S/o. Thadi Veeran Reddiyar through registered sale deeds dated 12.09.1960, 29.08.1960, 19.10.1964 and 21.12.1964. The said Nambi Reddiyar purchased the property from all the legal heirs, except the legal heirs of Subbiah Konar, namely, Nalla Perumal, Murugan and Subbiah. Nambi Reddiyar executed a registered Will dated 06.02.1920 in favour of his second daughter Sankaralakhsmi.



Therefore, the said Sankaralakshmi became the absolute owner of the property. She also executed a power of attorney dated 31.12.2009 in favour of Narayanan @ Kannan and Ramiah @ Anand. The said Murugan and Subbiah gave power to one A.Malaiyandi on 26.11.2010. Thereafter, the plaintiff herein purchased the suit property from the said Sankaralakshmi as well as Malaiyandi, under registered sale deed dated 30.12.2010. Therefore, the plaintiff herein has become the absolute owner of the property. Further, the patta in respect of the suit property also changed in the name of the plaintiff. Therefore, the defendants have no title over the property.

9. It is the further case of the plaintiff that the first defendant claimed title through the decree passed in O.S.No.75 of 1952 and consequential sale deed dated 25.07.1975 executed by one Ramasamy Nadar. But, the suit property was not the subject matter of the present suit. Therefore, the first defendant has no right over the property. The second defendant himself filed a suit in O.S.No.518 of 1995 against one Pitcha Konar for declaration and injunction on the basis of the said compromise decree and sale deed. But, the said suit came to be dismissed on merits holding that the present suit property and another property in



S.No.757/2 were not the subject property in the present suit, hence, the defendants have no right over the suit schedule property.

10. The case of the first defendant that his vendor in title occupied the suit schedule property by Judgment and Decree in O.S.No. 75 of 1952 and he purchased the same from the Decree-holder by way of a registered sale deed dated 26.03.2002. After his purchase, the patta was transferred in his name and the revenue record also stands in his name. The decree in O.S.No.75 of 1952 was marked as Ex.B3 and the patta was also marked as Ex.B1.

11. The plaintiff claims title through Exs.A2, A3 and A5. The suit property originally belonged to one Nambi Konar and Subbiah Konar. The legal heirs of Nambi Konar sold the property to one Nambi Reddiar through registered sale deeds dated 12.09.1960 (Ex.A2), 20.09.1960 (Ex.A3) and 21.12.1964(Ex.A5). Nambi Reddiar executed a registered Will in favour of his daughter Sankaralakshmi on 06.02.1990. The plaintiff purchased the suit property from Sankaralakshmi and also from the legal heirs of Subbiah Konar. The plaintiff has proved his case and title sufficiently through registered sale documents and also through



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other revenue records. But, the defendants claimed title through the decree passed in O.S.No.75 of 1952 and consequential sale deed dated 25.07.1975 executed by one Ramasamy Nadar.

12. The suit in O.S.No.75 of 1952 was decreed based on a compromise memo. A copy of the Decree passed in O.S.No.75 of 1952 was marked as Ex.B3. However, the suit schedule property was not mentioned in Ex.B3, but, it was mentioned only in the compromise memo, which was marked as Ex.B4. The second defendant also filed a suit in O.S.No.518 of 1995 against one Pitchai Konar, for the relief of declaration and injunction based on the compromise decree and sale deed, but, the same was dismissed on merits holding that the present suit property and another property in Survey No.757/2 was not the subject matter in the present suit.

13. From the above, it clearly shows that the present suit property was not the subject property in O.S.No.75 of 1952. Further, it is only a question of fact and the Courts below have concurrently held that the suit schedule property is not the subject property of O.S.No.75 of



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14. The said Nambi Reddiar had executed a Will in favour of his daughter Sankaralakshmi on 06.02.1990. The said Will is a registered one, which was marked Ex.A25. Further, a certified copy of the Will was marked and the attesor of the Will was examined as P.W.2. P.W.2, in his evidence, has clearly stated that the executant Sankaralingam has signed the Will in the Register Office in his presence and other attestors. But, on the side of the defendants, excepting a suggestion, no other attempt was taken to disprove the evidence of P.W.2. Therefore, both the Courts below have concurrently held that the Will is not in dispute.

15. Further, the defendants are alien to the family of Sankaralakshmi and they are not entitled to question the Will as they have no *locus standi* also. Therefore, the question of proving the Will itself does not arise. The Will Ex.P25 was also proved through P.W.2, who is the attesor of the Will.

16. In view of the above, this Court is not inclined to interfere with the Decree and Judgment passed by the courts below. Consequently, the substantial questions of law are answered against the appellant.



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17. In the result, the judgment and decree passed by both the courts below are confirmed. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No.

Internet: Yes / No.

To

1. The learned Principal Sub Judge,
Tirunelveli.
2. The Principal District Munsif Court,
Tirunelveli.



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B.PUGALENDHI, J.

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