



S.A.No.445 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.No.445 of 2000

Jagannathan (Died)

... Appellant/Appellant/
1st Plaintiff

1.V.J.Vasanth (Died)

2.V.J.Naganathan

3.V.J.Srinivasan

... Appellants 1 to 3/
LRs of deceased sole appellant

[Appellants 1 to 3 are brought on record as LRs of the deceased sole appellant vide order dated 18.07.2006 in C.M.P.(MD) No.3407 of 2006 in S.A.No.445 of 2000]

[Memo USR 71/2019 is recorded as 2nd appellant died and appellants 3 and 4 are the LRs of the deceased 2nd appellant as per order dated 10.01.2019 in S.A.No.445 of 2000]

Vs

1.Mothilal

2.Sekar

3.Chandra Bose

... Respondents 1 to 3/
Respondents 1 to 3/
Defendants 1 to 3



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4.Kadammbavalli

5.Vasantha

6.Janaki

... Respondents 4 to 6/
Respondents 4 to 6/
Plaintiffs 2 to 4

7.N.Indumathi

8.G.M.Naganathan

9.G.M.Rameshbabu

10.S.S.Nagalammal

11.G.M.Padmavathi

... Respondents 7 to 11/
LRs of deceased R1

[R7 to R11 brought on record as LR's of the deceased 1st respondent vide order dated 18.03.2022 in C.M.P.(MD) Nos.5139 and 9102 of 2019 in S.A.No.445 of 2000]

[R3 to R6 - given up as they remained ex-parte before the Court below vide order dated 18.03.2022 in C.M.P.(MD) Nos.5139 and 9102 of 2019 in S.A.No.445 of 2000]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 14.03.1997 in A.S.No.77 of 1996 on the file of the Principal District Court, Ramanathapuram confirming the judgment and decree dated 19.09.1995 in O.S.No.192 of 1993 on the file of the District Munsif Court, Paramakudi.

For Appellants : Mr.S.Madhavan

For Respondents : Mr.H.Lakshmi Shankar
for R2 & R7 to R11



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JUDGMENT

The first plaintiff in O.S.No.192 of 1993 on the file of the District Munsiff Court, Paramakudi, is the appellant herein. The suit was laid for declaration of title of plaintiffs 1 to 4 and that of the third defendant over a vacant plot measuring 13.5 ft x 21 ft. The suit was dismissed successively both by the trial Court and also by the first appellate Court (in A.S.No.77 of 1996). For narrative convenience, the parties are referred to by their rank before the trial Court.

2. The brief facts necessary for the current purpose may be stated as below:

- The suit property originally belonged to certain Lakshmana Iyer. On 01.04.1905 vide Ext.A.1-sale deed, Lakshmana Iyer sold the property to one Sundararajan. It is an admitted fact that within the branch of Sundararajan, this purchase was obtained by him for himself and also for his three brothers viz., Srinivasan, Jagannathan and Krishnasamy.
- Sundararajan did not have a direct descendant to this property. His



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brother, Srinivasan however, had five sons. They are: (i) Harikrishnan, (ii) Rayalu, (iii) Seetharaman, (iv) Pattabhiraman and (v) Rajaram. The issue-less Sundararajan adopted his nephew Rajaram. According to the plaintiffs, Rajaram, as the adopted son of Sundararajan, would be entitled to $\frac{1}{4}$ share in the suit properties and the remaining four sons of Srinivasan would be entitled to $\frac{1}{4}$ share each.

- All these owners have been in possession and enjoyment of the property and had also been exercising or doing acts of ownership *vis-a-vis* the suit property. This would be known from the following facts:

- (i) Vide Ext.A.7, dated 19.09.1921, Sundararajan executed a Power of Attorney in favour of his adopted son Rajaram. On the strength of this Power of Attorney, Rajaram executed Ext.A.8-simple mortgage deed, dated 06.06.1924 in favour of a third party. This pertains to $\frac{1}{4}^{\text{th}}$ share of Sundararajan. On the same day, Sundararajan's brother



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Srinivasan (the biological father of Rajaram) too had executed Ext.A.9-simple mortgage deed in favour of the same mortgagee in whose favour Ext.A.8 was executed.

(ii)On 03.06.1946 and subsequently on 26.09.1966, the first plaintiff's father, Pattabhiraman and the first plaintiff had respectively executed Ext.A.10 and Ext.A.11 mortgages. On 05.11.1969, vide Ext.A.12, the first plaintiff too had created a mortgage.

(iii)On 25.03.1965, vide Ext.A.2, Rajaram had settled his 1/4th share in favour of the first plaintiff. Thus, Sundararajan's branch ceased to have any share in the suit property.

(iv)According to the plaintiffs, Seetharaman, one of the sons of the aforesaid Srinivasan has left the family and his whereabouts are not known. This would imply that Srinivasan's 1/4th share in the property equally devolved on his three sons viz., Harikrishnan, Rayalu and Pattabhiraman.

(v) The first plaintiff claims under Pattabhiraman as his sole



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son. Plaintiffs 2 to 4 are the children of Rayalu. The third defendant is the son of Harikrishnan.

In the suit property, the first plaintiff claims right to 1/4th share that he obtained under Ext.A.2-settlement deed + 1/3rd of 1/4th share of Srinivasan by inheritance. Plaintiffs 2 to 4 and the third defendant are also respectively entitled to each 1/3rd of 1/4th share of Srinivasan. They claim that they are in possession of the property along with the third defendant and when faced with certain obstruction to their title from defendants 1 and 2, they have come forward with the suit.

3.1 Defendants 1 and 2 are the descendants of Lakshmana Iyer, the executant of Ext.A.1-sale deed in 1905. According to them, Ext.A.1 is a sham document, and that it did not take effect. Lakshmana Iyer had two sons viz., Sami Iyer and Govinda Iyer, and defendants 1 and 2 are the children of Govinda Iyer. According to them, Sami Iyer's sons are Rama Rao and Thulasiraman, both of whom have conveyed their right in favour of defendants 1 and 2 vide Ext.B.1-release deed dated 11.08.1981. They also



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claimed that patta to the property remains with them and they have also been paying *kist* to the property.

3.2 The third defendant, who is the cousin of the plaintiffs had filed his independent written statement, wherein he asserted exclusive and independent title over the suit property.

3.3 The dispute went to trial and both sides have adduced their oral and documentary evidences. For the plaintiffs, the first plaintiff had examined himself as P.W.1 and he had produced Ext.A.1 to Ext.A.13, of which substantial documents, pertaining to the derivation of title, have already been introduced. Of the remaining documents, Ext.A.3 is a copy of the plaint in O.S.No.70 of 1938 laid by a third party mortgagee against the heirs of Srinivasan. This included the first plaintiff as well. For the defendants, the first defendant examined himself as D.W.1. The third defendant examined himself as D.W.2, and D.W.3 to D.W.5 are independent witnesses. The defendants have produced Ext.B.1 to Ext.B.24. They have also



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produced certain mortgage deed dated 05.12.1991, which defendants 1 and 2 had executed in favour of a third party and they have partitioned the property vide Ext.B.3 dated 14.12.1991. All the rest are essentially pertaining to the entries in property tax register of the local body or about the house tax receipts. The trial Court appointed a Commissioner, whose report and plans were taken on record as Ext.C.1 to Ext.C.3.

3.4 On appreciating the evidence, the trial Court, as outlined earlier, dismissed the suit. Its line of reasoning essentially is:

- (a) That patta to the suit property remains with the family of the transferor of Ext.A.1, and it was not mutated to Sundararajan or his brothers.
- (b) That Ext.A.2 and Ext.A.8 to A.12 all deal only with 1/4th share in the property.
- (c) That while according to the plaintiffs, the property purchased under Ext.A.1 belonged to Sundararajan and his three brothers and that it was divided among them, some of the mortgage deeds executed deal



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with the entire property and the rest deal with 1/4 share. To this, the third defendant, who according to the plaintiffs, is their co-sharer gives his own twist to the fact when he claims that the entire suit property came to be allotted to Sundararajan's adopted son Rajarajam from whom, he had obtained the property.

(d) That Ext.B.23 and Ext.B.24 are certain documents pertaining to the property on the adjacent eastern side of the suit property, wherein the western boundary is shown to be the property of defendants 1 and 2 and in these two documents, Pattabhiraman and Rayalu, under whom the plaintiffs claim right, are the attestors.

(e) The trial Court also accepted the version of the defendants that there is a residential building in the property, which is also reflected in the mortgage deed and that the defendants are in occupation of the building and have also been paying tax. Though the plaintiffs make a statement in the plaint that the building was demolished some 25 years prior to the filing of the suit, the defendants established that they had obtained Ext.B.14-plan and Ext.B.15-approval for



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demolition and re-construction of the said property and they are immediately prior to the institution of the suit.

4. When the matter was taken in appeal, the first appellate Court concurred with the findings of the trial Court and dismissed the appeal, and hence, the present Second Appeal. This appeal was admitted for considering the following substantial questions of law:

“i) Whether in law have not the Courts below erred in non-suiting the plaintiffs after finding that the plaintiffs' ancestors are the owners of the property ? and

ii) Whether in law are the Courts below right in holding that the defendants have prescribed title by adverse possession in the absence of necessary animus of documents?”

5. Mr.S.Madhavan, learned counsel for the appellants submitted that the Courts below have erred in ignoring the effect of Ext.A.1-sale deed. It may be that this document might not have been recited in some of the mortgage deeds which the plaintiffs relied on to establish that they have exercised acts



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of ownership over the property, yet the fact remains that there existed a document such as Ext.A.1 without which Sundararajan and his brothers or their heirs could not have obtained a right to deal with the property. Secondly, non-mutation of revenue records by itself ought not to have weighed with the courts below, for patta is never a document of title.

6. Per contra, Mr.H.Lakshmi Shankar, learned counsel for the respondents made a succinct statement explaining the line of reasoning of the Courts below.

7. There is a considerable merit in the submissions of the learned counsel for the respondents. Since some aspects regarding the description of the property were raised in this case, this Court perused the description of the property and it provides the side measurements of the property along with the boundary. Beyond that other details pertaining to identify its location were not stated. However, since, the parties have no confusion regarding the identity of the property, this Court may not consider that the description



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of the property defies Order VII Rule 3 C.P.C.

8. Turning to the merit of the case, it may be that the plaintiffs might have executed few mortgage deeds such as Ext.A.8 to Ext.A.12, but all of them are simple mortgage deeds. Now, in order to ascertain whether Ext.A.1 is a sham transfer or not, what is significant is whether the purchaser thereunder had taken possession of the property pursuant to the said sale. Here, the odds are loaded heavily against the plaintiffs with the defendants producing the property tax register, property tax receipts of their house and also the building plans. To this can be added the boundary description provided in the mortgage deeds executed by the defendants' side vide Ext.B.21 to Ext.B.

24. It may be that the respective fathers of the plaintiffs might have been the attestors, but the act of attestation only require *animus attestandi* and the attestors are not expected to know the contents of the document. Yet given the circumstances in which these mortgage deeds are positioned, they only corroborate what the defendants have already established in this case. Ultimately, it is a question of fact on which the Courts below have arrived at



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a decision and this Court does not find any perversity whatsoever in the approach and the conclusion of the Courts below.

9. Accordingly, this Second Appeal is dismissed and the judgments and decrees of the first appellate Court dated 14.03.1997 in A.S.No.77 of 1996 and the trial Court dated 19.09.1995 in O.S.No.192 of 1993 are confirmed.

No costs.

15.09.2022

Internet: Yes
Index: Yes/No

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To

1. The Principal District Judge,
Ramanathapuram
2. The District Munsif, Paramakudi.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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