



S.A.No.2119 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1. Subramanian
2. Radhakrishnan

... Appellants

Vs.

1. Chokkalingam (Deceased)
2. Valarmathi W/o. Srinivasan
3. Chandra W/o. Late Chockalingam
4. Gajalakshmi W/o. Ramalingam
5. Anbarasi W/o. Late Chockalingam
6. Mahalakshmi W/o. Ramalingam

... Respondents

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment in A.S.No.34 of 1999 passed by the Principal Subordinate Judge, Vridhachalam dated 17.04.2002 confirming the judgment and decree in O.S. No.1271 of 1987 dated 26.07.1999 on the file of the Principal District Munsif, Vrudhachalam.



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For Appellant : Mr. D. Shivakumaran
For Respondents : R1 – died.
R2 to R6 - No appearance.

J U D G M E N T

The unsuccessful defendants in O.S.No 1271 of 1987 on the file of the Principal District Munsif Court, Virudhachalam are the appellants herein.

2. The legal heirs of the sole plaintiff in the above-mentioned suit are the respondents in the second appeal. Infact, during the pendency of the first appeal in A.S.No.34 of 1999 before the Principal Sub Court, Virudhachalam, the sole plaintiff who was the 1st respondent in the said first appeal died and his legal heirs were brought on record as respondents 2 and 3 before the first appellate court. Pending the second appeal, the 1st respondent, that is son of the sole plaintiff died and his legal heirs have been impleaded as respondents 3 to 6 in the present second appeal. Despite service of notice, none of the respondents have chosen to appear to defend the concurrent findings in their favour.

3. The brief facts that are necessary for adjudicating the present second appeal are as follows. The plaintiff claiming to be a purchaser of 0.21 cents out of 1.23 acres comprised in S.No.236/17, Periyavadavadi village,



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Virudhachalam sought for declaring his title to the said property, in view of the claim of the defendants that the plaintiff did not have any title from 20.11.1987 onwards. The plaintiff also sought for consequential relief of a permanent injunction.

4. The defendants, namely the appellants herein, contested the said suit on the grounds that the documents under which the plaintiff traced his title were not legally enforceable; the defendant's vendor had purchased the subject property in a court auction sale; the description of the suit property as set out by the plaintiffs did not match with the sale deed under which the plaintiff claims to have purchased the suit property.

5. Before the trial court, the plaintiff examined himself as PW1 and one Mr.Ramasamy as PW2 and exhibited documents in Ex.A-1 to A-30. On the side of the defendants, the 1st defendant i.e. 1st appellant herein examined himself as DW1 and one Mr.Nagamuthu was examined as DW2. On the side of defendants, Ex.B-1 to Ex.B-8 were exhibited.

6. The trial court after examining the pleadings as well as the oral and documentary evidence, decreed the suit as prayed for. The defendants preferred A.S.No.34 of 1999 before the Principal Sub Court, Virudhachalam



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and the said appeal also came to be dismissed and as against such concurrent findings, the defendants, as appellants are before this court.

7. The second appeal had been filed mainly on the following grounds:

a. The suit property was already subject matter of another suit in O.S.No.189 of 1962, which had ended in a compromise and a final decree subsequently came to be passed which has not been considered by the courts below.

b. The predecessor in title of the plaintiff was a party to the said suit and he cannot plead ignorance of the fact that the suit property stood allotted to the predecessor in title of the defendants and therefore the documents executed by him in the nature of the settlement deed in Ex.A-12 dated 19.01.1968, after the final decree came to be passed 29.09.1964 was void and unenforceable.

The following substantial question of law was framed at the time of admission of the above second appeal:

“Whether the courts below erred in law and misdirected themselves in decreeing the suit without reference to the evidence let in by the appellant and by misappreciation of relevant documentary evidence?”



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8. Heard Mr.D.Shivakumaran, Counsel for the appellants. As already indicated despite service of notice none of the respondents have chosen to appear to defend the judgment and findings in their favour. I have also perused the records.

9. The counsel for the appellants would focus on the issue regarding the final decree passed in the presence of the plaintiff which would clearly act as an embargo for the plaintiff to subsequently deal with the subject property which had been allotted to the predecessor in title of the defendants. The learned counsel for the appellant would take me through the pleadings as well as the judgments of the courts below. He would also place reliance on the following judgments:-

i. Ramu & others Vs Samuel Nadar reported in 2017 (1) MWN (Civil) 732

ii. Thayanayaki Ammal Vs Ramachandran reported in 2017 (1) LW 240.

iii. Sebastiao Luis Fernandes (Dead) through LRS & others Vs K.V.P. Shastri (Dead) Through LRS & others reported in 2013 (15) SCC 161.



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10. Ex.B-1 is the certified copy of the suit register in O.S.No.189 of 1962.Ex.B-2 is the sale certificate in favour of one Gurusamy Konar who purchased the suit property in a court auction sale. Thereafter, it is seen that vide Ex.B-3 the said court auction purchaser, Rajaambal has conveyed the property to the appellants. On the side of the plaintiff, it is seen that in Ex.A-12, Perumal Konar has settled the property in and by settlement deed dated 19.01.1968 in favour of Ramasamy Konar, who in turn sold the property to the plaintiff, vide Ex.A1 dated 15.09.1984. The courts below have proceeded to reject the defence set up by the appellants mainly on the ground that they did not produce even a copy of the plaint in O.S.No.189 of 1962 and the defendant had also consequently failed to establish that the property which is the subject matter of Ex.B-1 and the court auction sale in Ex.B-2 are one and the same.

11. I have perused Ex.B-1. It is the suit register extract of O.S.No.189 of 1962. The suit had been filed by Rajambal w/o Perumal Konar against Gunasamy Konar, Anajal Ammal, Perumal Konar, Vasudevan Padaiyachi and Marimuthu Padaicyachi. The suit was laid for partition and separate possession of the plaintiff's 1/4th share in several items of the



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properties which become available for partition subsequent to the demise of the original owner one, Krishna Konar, who died intestate on 23.09.1957. It is seen from the terms of compromise which forms part of Ex.B-1 that the 4th item of plaint B schedule property along with items 5,13 and 14 were allotted to Gurusamy Konar. However, it is noteworthy to notice that the 4th item of the B schedule property as found in the final decree and the 4th item of B schedule property as set out in the plaint are not one and the same. The properties allotted to the 1st defendant in the said suit have been described as No.1 being Punja lands was of an extent of 42 cents with specific boundaries and such property being comprised in punja Re-survey No 236/17. The boundaries of the property allotted to the 1st defendant as mentioned in the final decree are that it lies to the north of Adhimula Konar's properties and on the West and East of Muthusamy Konar's property and on the south of China Konar's property. The specific case of the appellants is that the boundaries mentioned in Ex.B-8 namely settlement deed dated 25.11.1997 and in Ex.A-12, namely the settlement deed dated 19.01.1968 and Ex.A-1 namely sale deed dated 15.09.1984 were not matching and there were discrepancies. When the plaintiff had approached the court seeking to declare his title, he is bound to establish



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his lawful title and possession and in that regard he has to file necessary documentary evidence to satisfy his claim as against the defence set up by the defendant. However, as already seen, even in the documents under which the plaintiff claims right, title and interest, the boundaries do not match with each other and pitted against such evidence let in before the court, the appellants as defendant's have filed Ex.B-1 to B-7 which clearly show that the defendant's vendor had purchased the property only in a court auction sale and moreover the predecessor in title of the plaintiff was a party to the final decree proceedings and therefore after having suffered a decree, it was not open to the said predecessor in interest to thereafter once again deal with the property which stood allotted to the defendant's predecessor in title. I have also gone through Ex.B-2 and Ex.B-3 in which the defendant claims right title and interest. The property that the defendant's had purchased was the property that stood allotted to Gurusamy Konar. Infact the suit property that was allotted to the said Gurusamy Konar being one amongst several other items of property was brought to sale in public auction pursuant to a decree in OS.No 925 of 1969 and an execution proceeding initiated in E.P.No 1795 of 1971. The District Munsif Court, Virudhachalam executed a sale certificate in favour of the



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purchaser, Rajambal.

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12. Even while deposing as PW1, the plaintiff has stated in cross examination that he was not aware of the boundaries of the suit property. He has also stated that when he purchased the suit property, he had not perused any documents and he believed the word of his vendor and went ahead to purchase the suit property. Such admissions on the part of the plaintiff clearly show that he has not taken bonafide steps to even verify the right title and entitlement of his vendor to convey the said property to him. In any event as already discussed hereinabove, when his vendor was a party to the compromise decree which resulted in final decree proceedings and the suit property having been allotted to Gurusamy Konar and the same having become final, it was not open to the plaintiff's vendor to deal with the said item of suit property by executing a settlement deed, based on which the property has been sold to the plaintiff. The learned counsel for the appellants also invite my attention to the very basis on which the plaintiff traced title to the subject property. It is stated by the plaintiff that one Adhimula Konar was entitled to suit property and he executed Ex.B-8 settlement deed in favour of his brother Perumal Konar, the plaintiff's predecessor in interest. However, there is no record to show as to how the said Adhimula Konar become entitled to the said item of suit property.



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In fact, it is seen from the available documents that Venkatachalapathy Konar was the original owner of the suit property which the fact is not denied by the plaintiff as well. There is force in the said submission made by the counsel for the appellants. In a suit for declaration of title, the onus is only on the plaintiff to lead oral and documentary evidence to clinchingly establish his right title and interest in the property to which he seeks declaration as well as relief of consequential permanent injunction. Unfortunately, the courts below have misdirected themselves and have chosen to pick holes in the defence set up in the defendant's, instead of examining the plaintiff's case first.

13. In *Ramu's case*, this Court had held that the burden of proof never shifts and it is only the onus that keeps shifting between the parties like a pendulum. In a suit for declaration of title and injunction, the burden is always on the plaintiff to establish his claim.

14. In *Thayanayaki Ammal's case*, this Court had held that even where the defence set up by the defendant was not strong and convincing, it is for the plaintiff to still establish his claim.

15. In *Sebastiao Luis Fernandes's case*, the Hon'ble Supreme court has explained the power of the High Court exercising jurisdiction under Section 100 of Code of Civil Procedure, 1908. The Apex Court held that when the



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findings of fact are perverse, even though concurrent, such findings when based on either wrong assumption of facts or non-appreciation of pleadings of evidence and records and also where the burden of proof is wrongly placed on the defendant instead of from the plaintiff, the High Court was entitled to interfere and set aside the concurrent finding rendered by the courts below.

16. I have already found that the courts below had erroneously shifted the burden of proof on the defendants and the plaintiff had miserably failed to lead credible evidence to establish his title. Even the documents under which he claims title, the boundaries do not match and further the very right of his vendor to deal with the property subsequent to the final decree having been passed in O.S.No.189 of 1962 being not available to him and even though the findings are concurrent, in view of the perversity in such findings and also improper appreciation of the documentary evidence available before this courts as well as the incorrect fixing of burden of proof on the defendants, I am constrained to interfere with the concurrent findings rendered by the courts below. The substantial question of law is answered in favour of the appellant. The appellant is entitled to succeed.

17. In fine, the second appeal is allowed and the Judgment and decree in A.S.No.34 of 1999, confirming the decree in O.S.No 1271 of 1987 is



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set aside and the suit in O.S.No.1271 of 1987 stands dismissed. There shall be no order as to costs .

15.09.2023.

Internet:Yes
Index:Yes/No
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To

1. The Principal Subordinate Judge, Vridhachalam
2. The Principal District Munsif, Vrudhachalam.



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P.B.BALAJI,J

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