



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.9.2023

Delivered on : 24.11.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.No.667 of 2023
and
C.M.P.No.21164 of 2023

V.Kanagaraj

Appellant

vs.

1. G.Krishnaveni
(rep. by her power Agent
Selvaganapathy)
2. G.Selvaganapathy
3. G.Loganathan
4. G.Subramaniam
5. K.K.Kamalavalli
6. G.Elamurugu Pandian
7. G.Velmurugan
8. G.Thillaikannan
(respondents 3 to 8 rep. by their
power Agent R2-Selvaganapathy)

Respondents

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 29.8.2019 passed in A.S.No.18 of 2018 on the file of the Sub Judge, Chidambaram confirming the Judgment and decree dated 3.2.2018 passed in O.S.No.33 of 2013 on the file of the District Munsif cum Judicial Magistrate, Portonovo.

For Appellant : Mr.S.Sathish Rajan

For Respondents : Mr.A.D.Janarthanan



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JUDGMENT

Defendant, who lost his case before both the courts below, is the appellant.

2. The suit was filed by the respondents herein for declaration of their title in respect of the suit property and for recovery of possession with costs.

3. The case of the plaintiffs is as under:-

i) The suit property originally belonged to one Natesa Chettiar, who, settled the same to his grandson Govindasamy Chettiar, by way of registered settlement deed dated 01.04.1954. The suit property is an agricultural land and UDR patta was issued in the name of Govindasamy Chettiar. Govindasamy Chettiar died intestate on 22.07.1984. He had 7 sons and 1 daughter. One of his legal heirs namely Vinayagamoorthy died unmarried on 06.01.1987. The 1st plaintiff is the wife of Govindasamy and the other plaintiffs are his sons and daughter. They got settled at Chennai after the death of Govindasamy.



ii) On perusal of records in the year 2011, they came to know that patta has been wrongly issued in the name of one Veerappan and thereupon a complaint was lodged by the 1st plaintiff and after enquiry the patta was changed in the name of the 1st plaintiff by the Tashildar vide his proceedings in Na.Ka.No.F2/1458/2012 dated 26.08.2013.

iii) The legal heirs of Govindasamy had executed a power of attorney to one of the legal heirs namely Selvaganapathy, the second plaintiff on 03.05.2012.

iv) On 26.09.2013 at about 10.00 a.m., the defendant came up with rowdies to the suit property and threatened the second plaintiff with dire consequences to vacate the land immediately and thereupon, the second plaintiff lodged a complaint with the Police on 29.06.2013, where, he was advised to approach the Civil Court.

v) The 2nd plaintiff, for himself and on behalf of the other plaintiffs, had mortgaged the suit property to one R.Parthasarathy. Whiles, having understood that the defendant is attempting to create documents to thwart the title of the plaintiff, the suit was filed for permanent injunction restraining the defendant from interfering in the peaceful possession and enjoyment of the suit property by the plaintiffs.



vi) Still, in the third week of January 2015, the defendant had trespassed into the suit property and questioned the title of the plaintiffs. Therefore, the prayer in the suit was amended seeking a relief of declaration of title of the plaintiffs to the suit property and for recovery of possession of the same.

4. The defendant had filed a written statement contending as under:-

i) The settlement of the suit property made by Natesa Chettiar to Govindarasu Chettiar by way of a registered settlement deed dated 01.04.1954 is not denied.

ii) However, on 07.01.1963 the said Govindasamy Chettiar and Veeraperumal Padayachi, father of the defendant, had entered into an agreement of sale in respect of the suit property for a sale consideration of Rs.1,500/-. On the date of agreement itself, Govindasamy Chettiar had received an advance of Rs.200/- from Veeraperumal Padayachi and agreed to register the sale deed when both the parties feel convenient.

iii) On 20.02.1963, Govindasamy Chettiar executed a consent letter and a receipt in favour of Veeraperumal Padayachi, wherein



Govindasamy Chettiar admitted the execution of sale agreement and receipt of advance amount of Rs.200/- and admitted the discharge of Shanmuga Padayachi's promissory note dated 15.01.1957 by Veeraperumal Padayachi paying Rs.550/- and that the remaining amount of Rs.750/- was received by Govindasamy Chettiar in cash from Veeraperumal Padayachi. Thus, Govindasamy Chettiar had received the entire sale consideration from Veeraperumal Padayachi and agreed to execute the sale deed as and when both the parties feel convenient.

iv) After receipt the entire sale consideration under the consent letter-cum-receipt dated 20.02.1963, Govindasamy Chettiar handed over the suit property to Veeraperumal Padayachi and thereupon, Veeraperumal Padayachi took possession and enjoyment of the suit property and was cultivating the same. Patta stands in the name of Veeraperumal Padayachi and he has been paying the kist.

v) Veeraperumal Padayachi died in 1982. After his death, his sons and daughters have been in possession and enjoyment of the suit property. Whiles, suddenly, in the end of 2012, revenue officials enquired about the ownership of the suit property and transferred the patta to the name of the first plaintiff, Krishnaveni, W/o.Govindasamy



Chettiar. The Tashildar has no right to decide the ownership. The transfer of patta in the name of Mrs. Krishnaveni is against law.

vi) The plaintiffs joined together and created a power of attorney to grab the suit property from the defendant. The allegations of threatening by the defendant is denied. The lodgment of complaint by the second plaintiff is denied. The mortgage stated to have been given by the 2nd plaintiff is denied. The defendant and his father have been in possession and enjoyment of the suit property for more than 15 years and thereby the plaintiff is estopped from claiming any right over the suit property. The suit is liable to be dismissed.

5. The plaintiffs have filed a reply to the counter affidavit contending as under:-

The agreement of sale projected by the defendant between Govindasamy and Veeraperumal, dated 07.01.1963 is a false, forged, fabricated and concocted document. The signature of Govindasamy is forged. The consent letter-cum-receipt stated to have been executed by Govindasamy Chettiar on 20.02.1963 is a false and forged one. Govindasamy Chettiar had never executed any such document. Govindasamy Chettiar never admitted the discharge Shanmuga



Padayachi's promissory note dated 15.01.1957 by Veeraperumal Padayachi. Govindasamy Chettiar never received Rs.750/- as balance sale consideration. Govindasamy had never seen Mr. Shanmuga Padayachi and he had no money transaction with Shanmuga Padayachi. There was no necessity for Govindasamy to borrow any amount from anybody. The promissory note dated 15.01.1957 is a forged, fabricated and cooked-up document. Govindasamy never handed over the suit property to Veeraperumal Padayachi under the consent letter-cum-receipt dated 20.02.1963. Veeraperumal was never in possession and enjoyment of the suit property at any point of time from 20.02.1963. The defendant was also called for patta enquiry by the Tashildar, Chidambaram. Therefore, he is estopped from contending anything contrary to the said document. The suit is entitled to be decreed.

6. Per contra, the defendant had filed additional written statement contending as under:-

There is a clear recital in the agreement of sale dated 20.02.1963 to the effect that the suit property in R.S.No.94/1 to the extent of 86 cents has been handed over to Veeraperumal Padayachi.



The legal heirs of Veeraperumal are proper and necessary parties to the suit and thereby, the the suit, without impleading them as parties, is affected by non-joinder of necessary parties. No proper enquiry was conducted by the Revenue Department beforever the patta was transferred in the name of the first plaintiff. Since 1963 the defendant's father and other legal heirs of Veeraperumal Padayachi are in possession and enjoyment of the suit property and thus, they had prescribed the title by adverse possession also. The suit is to be dismissed.

7. On the above pleadings, the trial Court had framed the following issues :

- 1) Whether the suit is bad for non-joinder of necessary parties?
- 2) Whether the promissory note dated 15.01.1957 is a forged document?
- 3) Whether the defendant has prescribed title by adverse possession in the suit property?
- 4) Whether the suit property is in possession of the plaintiffs?
- 5) Whether the plaintiffs are entitled to get a decree for declaration of title as prayed for?



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6) Whether the plaintiffs are entitled to the reliefs as prayed for?

7) To what other reliefs the plaintiffs are entitled to?

8. Before the trial Court the 2nd plaintiff examined himself as P.W.1 and one Somasundaram as P.W.2 and Ex.A.1 to A.12 were marked. On the side of the defendant, he examined himself as D.W.1, apart from examining five others as D.Ws.2 to 6 and marked Ex.B.1 to Ex.B.10. The Court documents were marked as Ex.C.1 to Ex.C.5.

9. After a full fledged trial, the Trial Court had decreed the suit as prayed for by the plaintiffs, against which, the Appeal Suit has been filed by the defendant. The Appellate Court, on re-appreciating the oral and documentary evidence, had concurred with the findings of the Trial Court. Aggrieved against the same, the present Second Appeal has been filed by the defendant.

10. The crux of the submissions of the learned counsel for the appellant is as under:-

The sale agreement Ex.B2 dated 07.01.1963, based on which, the defendant traces his title, is a document of 30 years old and



thereby, a presumption has to be drawn that the signature and recitals found therein are that of the executor Govindasamy Chettiar. Equally, a presumption has to be drawn in respect of the consent letter, Ex.B3 also considering the age of the said document, however, the courts below have erred in disbelieving those documents as genuine without properly appreciating the same. The defendant and his father had been in possession of the suit property from the year 1963 and thereby, the defendant had perfected his title by adverse possession and the suit filed belatedly, is hopelessly barred by limitation. Even according to the plaintiffs, the defendant had trespassed into the suit property during the 3rd week of January 2015, however, the application for amendment to include the prayer of recovery of possession was filed by the plaintiffs only on 1.8.2015, which is beyond the period of 6 months prescribed under Section 6 of the Specific Relief Act barring a suit to be filed by the dispossessed person. The courts below have erred in declaring the title and possession of the plaintiff in respect of the suit property based on revenue records.

11. The counter contentions made by the learned counsel appearing for the respondents/plaintiffs are as under:-



It is the vehement case of the respondents/plaintiffs that the signatures of Govindasamy Chettiar were forged by the defendant in Ex.B.2 to Ex.B.4. The appellant, who had an opportunity to get an expert opinion regarding the signatures of Govindasamy Chettiar in Ex.B.2 to Ex.B.4, had not taken any steps for the same and thereby the courts below, by comparing the signatures of Govindasamy, had rightly come to the conclusion that the signature of Govindasamy were forged in the said document. Ex.B.2 and Ex.B.4 being not genuine, the appellant cannot claim himself as a prospective purchaser of the suit property. The failure on the part of Veeraperumal and the defendant to take any steps to get the sale deed registered creates much suspicion. The courts below, on appreciating the evidence on record and had granted the reliefs sought for by the plaintiff and thereby, the Second Appeal is liable to be dismissed.

12. Having heard the learned counsel appearing for the parties and perused the materials available on record, this court finds that the plaintiffs, who are legal heirs of one Govindasamy Chettiar, filed the suit for declaration of their title in respect of the suit property and recovery of possession. They claim that the suit property had devolved



on them from their father Govindasamy Chettiar. It is their case they had settled at Chennai after their father Govindasamy Chettiar and on coming to know that patta has been wrongly issued in the name of one Veerappan, they probed into the issue and commenced their struggle to secure their property from the clutches of the defendant. When all their attempts failed, they were constrained to file the suit. To substantiate their case, they have filed 12 documents as Exs.A1 to A12 including the Settlement Deed, dated 1.4.1954 standing in the name of their father Govindasamy Chettiar, legal heirship certificate and revenue records.

13. To contest the claim of the plaintiffs, the defendant has come out with a case that the plaintiffs' father Govindasamy had entered into an agreement of sale on 7.1.1963 standing in favour of his father Veeraperumal Padayachi, agreeing to sell the suit property to him for a sale consideration of Rs.1,500/- after receiving a sum of Rs.200/- as advance. Towards the balance sale consideration, it is the case of the defendant that his father Veeraperumal Padayachi had discharged the pronote executed by Govindasamy in favour of one Shanmuga Padayachi by paying a sum of Rs.550/- and further paid a



sum of Rs.750/- in cash and thus, his father had paid the entire sale consideration. To substantiate his case, he has produced Exs.B3, consent letter cum receipt dated 20.2.1963, Ex.B4 pronote dated 15.1.1959, Ex.B6 dated 20.1.1963. It is the case of the defendant that by executing Ex.B3 consent letter cum receipt, Govindasamy Chettiar had handed over possession of the suit property to Veeraperumal Padayachi, father of the defendant and since then, the said Veeraperumal Padayachi and the defendant had been in possession and enjoyment and thereby, the plaintiff is not entitled to the relief sought for, however, the courts below have erred in granting the relief to the plaintiff by merely relying on the revenue records.

14. The title of the plaintiffs to the suit property is not disputed by the defendant. The dispute between the parties revolves around the unregistered agreement of sale, Ex.B2 said to have been executed by Govindasamy Chettiar in favour of Veeraperumal Padayachi, father of the defendant and the supporting documents filed by the defendant. The plaintiffs strongly denied the signature found in those documents and contended that they were forged ones, whereas, the defendant has not bothered to prove the signatures by sending the same to a



handwriting expert, instead, he has chosen to claim protection under Section 53A of the Transfer of Property Act.

15. A perusal of the judgments of the courts below reveals that the courts below have appreciated both oral and documentary evidence in right perspective and found that both Exs.B2 and B3, being relevant documents and base for the claim of the defendant, are unregistered ones and the signatures found in them were specifically denied by the plaintiffs, however, the defendant has not taken any steps to send the document to a handwriting expert for his opinion. It is surprise to note that when it is the stand of the defendant that his father had paid the entire sale consideration as per Ex.B2 agreement of sale, either his father or himself has not cared to seek for registration of sale deed. No such steps have been taken either till the death of Veeraperumal Padayachi, father of the defendant or till the death of Govindasamy Chettiar.

16. It is seen that that the plaintiffs have noticed some changes in the revenue records in the year 2011 and thereupon approached the appropriate authority for correcting the same, however, the defendant,



who also participated in the enquiry conducted by the revenue official, has not taken any steps to seek for registration of sale deed and only after the suit was filed by the plaintiffs, the defendant has chosen to come out with all cooked up stories with the unregistered documents to deny the title of the plaintiffs.

17. Further, the courts below have specifically analysed the documents filed by the defendant in support of his case of discharge of pronote made by his father on behalf of Govindasamy Chettiar and found that there are discrepancies in the endorsements made in the pronote which disclose that those endorsement were self-made endorsements. It is also relevant to note that the appellate court has taken much effort to re-appreciate the evidence and found a lot of discrepancies in the names and signatures found in the documents filed by the defendant in support of his claim. Further, it is seen that the defendant/appellant has not produced any solitary documentary evidence to establish the rightful possession of the defendant or his father Veeraperumal Padayachi and thus, the case of possession and enjoyment of the suit property over a long period has to fall to the ground. Moreover, the genuineness of the documents and the



signatures alleged to have been made by Govindasamy Chettiar therein have been specifically denied by the plaintiffs, however, the defendant has not even attempted to prove his case by sending the disputed signatures to a handwriting expert for his opinion, the possession of suit property over a long period claimed by him also goes unproved and thereby, he is not entitled to claim any protection under Section 53A of the Transfer of Property Act. Consequently, no question of limitation or adverse possession arises.

18. Further, peculiarly, the defendant has taken a stand that the suit filed by the plaintiff is barred by Section 6 of the Specific Relief Act as even according to the plaintiffs, the defendant had trespassed into the suit property and dispossessed the plaintiffs during the 3rd week of January 2015, but, the application for amendment to include the prayer of recovery of possession was filed by the plaintiffs only on 1.8.2015, which is beyond the period of 6 months prescribed under Section 6 of the Specific Relief Act.

19. Obviously, the event of dispossession alleged by the plaintiffs is not the one coming under the purview of the Specific Relief Act and



the suit initially filed by the plaintiffs was one for permanent injunction restraining the defendant from interfering in the peaceful possession and enjoyment of the suit property by the plaintiffs and subsequently, when the defendant had trespassed into the suit property and denied the title of the plaintiffs in respect of the suit property, the plaintiff had sought for amending the relief in the plaint and thereby to include the relief of declaration of their title and recovery of possession. Therefore, this court is of the view that only due to misconception, the defendant has raised such an issue.

20. In fine, this court finds that both the courts below have rightly appreciated both oral and documentary evidence and granted the relief sought for by the plaintiffs which do not warrant any interference. Therefore, this court is of the firm view that it is not obliged to frame any question of law in the present Second Appeal in the light of the decision of the Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** wherein it has been held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High



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Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any



substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

21. In the result, the Second Appeal fails and the same is dismissed without being admitted. No costs. The connected miscellaneous petition is also dismissed.

24.11.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Sub Judge,
Chidambaram.
2. District Munsif cum
Judicial Magistrate,
Portonovo.
3. Section Officer,
V.R.Section,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

P.D.JUDGMENT IN
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