



S.A.No.572 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

S.A.No.572 of 2023
and C.M.P.No.18039 of 2023

1. Anusuyamma
2. Rathinamma
- Lakshamma (Died)
3. Ramareddy
4. Shantha
5. Shyamala
6. R.Manohara Babu
7. Radhamma
8. Manjunatha Reddy
9. Saraswathiamma

... Appellants

Vs.

1. D.Koil Pitchai Daniel
2. Umapathy

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded set aside the Judgement and Decree dated 31.01.2020 made in A.S.No.16 of 2015 on the file of the learned Principal Subordinate Judge, Hosur,



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confirming the Judgment and Decree dated 03.09.2013 made in O.S.No.103 of 2006 on the file of the learned District Munsif cum Judicial Magistrate No.I, Hosur.

For Appellants : Mr.D.Rameshkumar

For R1 : Mr.S.John Peter

JUDGMENT

The Second Appeal has been filed against the Judgement and Decree passed by the learned Principal Subordinate Judge, Hosur, in A.S.No.16 of 2015 dated 31.01.2020, confirming the Judgment and Decree passed by the learned District Munsif cum Judicial Magistrate No.I, Hosur, in O.S.No.103 of 2006 dated 03.09.2013.

2. The plaintiff/1st respondent had filed the Suit seeking declaration of title and permanent injunction. The suit was decreed in favour of the 1st respondent/plaintiff and the same was confirmed by the first appellate Court. Aggrieved against the same, defendants 1, 2, 4 to 6 and the legal heirs of the third defendant have filed the present Second Appeal.



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3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

4. The crux of the plaint averments is as follows:

4.1. The suit property Item No. 1 bearing S.No 42/3 of Punagandhoddi village in Hosur Taluk to an extent of 0.41.5 Hectares was assigned by the Tamil Nadu Government under the Dharkasth Patta to late Venkatasamy Reddy, s/o. Pappa Reddy as per A.M.153, 154/92 and he was in possession and enjoyment of the same as his self acquired property and Patta was given in his favour.

4.2. The suit property Item No.2 bearing S.No. 42/5 of Punagandhoddi village in Hosur Taluk to an extent of 0.55.5 Hectares was similarly assigned under the Dharkasth Patta to Srinivasa Reddy, one of the sons of the said Venkatasamy Reddy as per A.M. 153, 154/92 and he was in possession and enjoyment of the same as his self acquired property and Patta was given to him.

4.3. The above said Venkatasamy Reddy executed a gift deed in favour of his grand daughter Sumithra, W/o Srinivasa Reddy with regard to the land in S.No.42/3 under a registered gift deed dated 28.06.2000 and



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delivered possession of the same. The gift deed was accepted and acted upon and Patta was given to her in Patta No.124. The above said Venkatasamy Reddy lived with his grand daughter Sumithra at Komaranapalli village till his life time and died on 24.02.2001.

4.4. The above said Srinivasa Reddy and Sumithra have sold the suit properties to the plaintiff under a sale deed 22.06 2005 for a valid and binding consideration of Rs.48,000/- and delivered possession of the same. The plaintiff had been in possession and enjoyment of the suit properties as the absolute owner ever since the sale deed in his favour and on the basis of the sale deed, he also changed the patta in his name.

4.5. Defendants 1 to 4 are the daughters of the said late. Venkatasamy Reddy, 5th defendant is the son of the said late. Venkatasamy Reddy. The daughters of late Venkatasamy Reddy got married long back and another son of Venkatasamy Reddy named Chinnappa Reddy died leaving behind him his wife Saraswathiamma, the 6th defendant. Defendants 1 to 6 have no right over the suit properties and they are absolute strangers to the suit properties.

4.6. The suit properties are the self acquired properties of late



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Venkatasamy Reddy and Srinivasa Reddy by way of Dharkasth grant from the Government and defendants 1 to 6 have no right to claim any right and title to the suit properties. The first defendant seems to have created a nominal and fraudulent registered sale agreement in favour of the 7th defendant wantonly on 03.03.2005 with a boosted price to the suit properties with all sorts of false and self serving recitals at the instance of the 5th defendant, who is on inimical terms with the family of Srinivasa Reddy. The first defendant has no right to the suit properties and the above said sale agreement is invalid and unlawful.

4.7. The plaintiff had also impleaded the 7th defendant as a necessary party to avoid multiplicity of proceedings. The plaintiff is in possession of the suit properties and before him his vendors were in possession of the same. The suit properties were assigned to late.Venkatasamy Reddy and it was his self acquired property and since the defendants tried to trespass into the suit properties the plaintiff has filed the present suit for declaration of his title to the suit properties and for permanent injunction against the defendants.



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5. The 5th defendant has filed the written statement and it was adopted by defendants 2 to 4 & 6. The crux of the averments in the written statement is as under :-

5.1. The suit is liable to be dismissed as it is bad for non-joinder of necessary parties. The suit property originally belonged to Venkatasamy Reddy and he died leaving his children viz., Aswathamma, Chinnappa Reddy, Srinivasa Reddy, Lokesh Reddy, who were not impleaded as parties to the suit.

5.2. Defendants 2 to 6 denied that Dharkasth Patta stands in the name of Venkatasamy Reddy and in the name of Srinivas Reddy and they have contended that the suit properties are the ancestral properties and the said Venkatasamy Reddy has no power or title to execute the gift deed and thereby, the alleged gift deed is not valid as per law. These defendants have no knowledge about the alleged gift deed and it will not bind the share of these defendants.

5.3. It was also contended that the possession was not delivered to the beneficiary and by using influence, the said Sumithra had obtained Patta in her name without possession and the defendants have denied that their father Venkatasamy Reddy lived with his grand daughter the



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said Sumithra at Komaranapalli village.

5.4. Neither Srinivasa Reddy nor Sumithra had possession or title to the suit property. The alleged sale deed dated 22.06.2005 in favour of the plaintiff is a nominal one. It is false and imaginary to state that the plaintiff is in possession and enjoyment of the suit properties. Thereby, the plaintiff is not entitled to any declaration sought for and they are not entitled for any injunction either mandatory or prohibitory. The suit is, therefore, liable to be dismissed.

6. After considering the above pleadings, the trial Court has framed the following issues.

1. Whether the plaintiff is entitled to get the relief of declaration as sought for?
2. Whether the plaintiff is entitled to get relief of permanent injunction as prayed for ?
3. To what other relief, the plaintiff is entitled for?

Additional issue raised by the trial Court is as under :-

Whether the documents created in favour of the plaintiff are not valid as suit properties are joint family properties of the defendants?

7. During the trial, on the side of the plaintiff, the plaintiff



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examined himself as PW1 and examined five witnesses as PW2 to PW6 and marked Ex.A1 to Ex.A6. On the side of the defendants, DW1 to DW3 were examined, however, no document was marked. Further, Ex.X1 to Ex.X9 were marked as third party documents through Revenue officials.

8. After considering the oral and documentary evidence on record, the trial Court, finding that the suit properties have been assigned to Venkatasamy Reddy and Srinivasa Reddy by way of Dharkasth Patta grant by the Government and thereby, the suit properties are self acquired properties of Venkatasamy Reddy and Srinivasa Reddy, decreed the suit holding that the the gift deed executed by Venkatasamy Reddy in favour of his grand daughter Sumithra is a valid one.

9. Challenging the same, defendants 1 to 6 have filed the Appeal Suit in A.S.No.16 of 2015 before the Principal Subordinate Court, Hosur, contending that the lower Court had not framed correct and proper issues and wrongly come to a conclusion that the suit schedule properties are the self acquired properties of Venkatasamy Reddy and Srinivasa Reddy by way of Dharkasth patta (Ex.A4) and that the said Venkatasamy Reddy, being the



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kartha of the family and Srinivasa Reddy is the worldly wise person, the patta was issued in their names, however, the trial Court failed to take into account that even though the revenue records stand in any one of the joint family members, they cannot get exclusive right and title over the said properties.

10. The first appellate Court, based on the grounds raised in the appeal, had framed the following points for consideration.

1. Whether the suit properties are joint family properties of defendants 1 to 6?
2. Whether the plaintiff is entitled to declaration and permanent injunction as sought for?
3. Whether the trial Court is correct in decreeing the Suit?

11. The Appellate Court had confirmed the judgment of the Trial Court by holding that the suit properties are the self acquired properties of Venkatasamy Reddy and Srinivasa Reddy. Against the concurrent finding of the courts below, the present Second Appeal has been filed.

12. Learned counsel for the Appellant submitted that in the gift deed, it has been categorically admitted by the said Venkatasamy Reddy that



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the suit properties are ancestral properties, whereas, the trial Court failed to take into consideration the same and thereby, he seeks to allow the present appeal.

13. Learned counsel for appearing for the first respondent/plaintiff submitted that the plaintiff, by examining PW2, Zakir Hussain, Record Clerk of Hosur Taluk Office and PW3, Village Administrative Officer of Punugandhody Village and by marking Ex.X1 to Ex.X9 have categorically proved that the suit schedule properties were assigned to Venkatasamy Reddy and Srinivasa Reddy. He further submitted that the Courts below have carefully analysed the oral and documentary evidence and rightly held that the suit properties are not ancestral properties and they had been assigned to the persons concerned and thereby, they are self acquired properties and the gift deed executed is a valid one. He further submitted that absolutely, there is no substantial question of law involved in this Second Appeal and thereby, the second appeal is liable to be dismissed.

14. Heard both sides, perused the judgments of the Courts below and also the grounds raised by the appellants.



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15. It is seen that though Venkatasamy Reddy is stated to have executed a gift deed (Ex.A2) in favour of his grand daughter Sumithra, no steps have been taken by the defendants to challenge the said gift deed (Ex.A2). Further, the defendants have not made any specific allegation in respect of execution of Ex.A2. Further, Ex.A3, certified copy of the Sale Agreement executed by the first defendant in favour of the 7th defendant in respect of the suit properties which is disputed by plaintiff. Ex.A4/Patta No.44 stands in the name of Srinivasa Reddy in respect of item No.2 of the suit properties and Patta No.124 stands in the name of Sumithra in respect of item No.1 of the suit properties. Ex.A5/Patta No.44 in respect of the suit properties stands in the name of the plaintiff. Ex.6 to ExA13 are Kist receipts standing in the name of Srinivasa Reddy and Sumithra, in respect of the suit properties. Analysing the above documents, the Courts below have found that the revenue records are in the name of Venkatasamy Reddy, Srinivasa Reddy and after purchase by the plaintiff, they stand transferred in the name of the plaintiff.

16. Further, the plaintiff, in order to substantiate his case also examined PW2 and PW3 and marked Ex.X1 to Ex.X9. Ex.X1 is the A



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Register, wherein it is mentioned that item no. 1 of the suit properties stands in the name of Venkatasamy Reddy and item no.2 of the suit properties stands in the name of Srinivasa Reddy. Ex.X2 the Chitta in respect of 2nd item of suit properties stands in the name of Srinivasa Reddy in Patta No.44. Ex.X3 is the Adangal for the year 2010 standing in the name of the plaintiff in respect of the suit properties. Ex.X4, A Register. Ex.X5 and Ex.X6 are Computer Pattas bearing 42 in respect of the suit properties are in the name of the plaintiff. Ex.X7 is Chitta extract standing in the name of the plaintiff in respect of the suit properties. Ex.X8 is the Adangal for the year 2011 standing in the name of the plaintiff in respect of the suit properties.

17. Further, the plaintiff had also examined PW4 Record Clerk of Hosur Taluk office and marked Ex.X9 entire file DK 8A/157 92 in respect of the mortgages created over suit properties. A perusal of Ex.X9, also reveals that item No.1 of the suit properties has been assigned to Venkatasamy Reddy and item No.2 of the suit properties have been assigned to Srinivasa Reddy. Further, Sumithra, in whose favour the gift deed was executed and who has also sold the property to the plaintiff was examined as PW5 and she has given evidence that her grandfather Venkatasamy Reddy had executed



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Ex.A2 Gift deed in her favour. Her husband Srinivasa Reddy (PW6) has given evidence to the effect that the suit properties were assigned to him and his father.

18. Therefore, the trial Court finding that the suit properties, which were assigned to Venkatasamy Reddy and Srinivasa Reddy are their self acquired properties, had allowed the Suit. The first appellate Court, on re-appreciating the entire oral and documentary evidence, had concurred with the findings of the Trial Court both on facts and in law and rightly appreciated and confirmed the judgment and decree of the Trial Court.

19. When both oral and documentary evidence clearly establish that the suit properties are self-acquired properties of Venkatasamy Reddy and Srinivasa Reddy by virtue of Dharkasth Patta, mere mentioning of the properties as ancestral properties in the gift deed will not change the character of the properties. This Court does not find any infirmity in the judgment and decree passed by both the Courts below either in law or on facts. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that no



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substantial question of law is involved to admit this second appeal.

20. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

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



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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 view of the above, sans any substantial question of law, the Second Appeal fails and the same is dismissed confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petition is closed.

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
ham/ssk

To

1. The Principal Subordinate Judge, Hosur.
2. The District Munsif cum Judicial Magistrate No.I, Hosur.
3. The Section Officer, VR Section, High Court of Madras.

A.D.JAGADISH CHANDIRA.,J.



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