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S.A.No.299 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.299 of 2007

1.Jagannathan
2.Masilamani
3.Uma
4.Geetha
5.Baby

... Appellants

Vs.

1.Annammal
2.Sambandan
3.Devaraj
4.Rangarajan
5.Narayanan
6.Illamalli
7.Maariammal
8.Manoharan
9.Perumal
10.Santha
11.Kokila
12.Annapushanam
13.Padma
14.Jaya

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree in A.S.No.89 of 2001 dated



S.A.No.299 of 2004

24.03.2004 on the file of the Principal Sub-Court, Chengalpet and also against the Judgment Decree in O.S.No.509 of 1996 dated 05.01.2001 on the file of the District Munsif Court, Tambaram.

For Appellants : Mr.R.Vijayaraghavan

For Respondents : Mr.R.Sivakumar
For R13 - No Appearance

R1 to 12 - No Appearance

R14 - No Appearance

JUDGMENT

This is a suit for declaration for title and for injunction.

2. The property which is the subject matter of the Suit is situated at Pulikoradu Village in Sriperumbudur Taluk. The extent of the property is 98 cents. Originally, the property was purchased in the year 1932 under Ex.A7. The purchaser was one Rangasamy. Rangasamy had a brother by name Vadivelu. It is the case of the plaintiffs that the family had properties situated in the same village in Survey Nos.16/4, 24, 24/2 and 25/2A.



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3. By an earlier partition between the brothers, the property in Survey No.16/4 to an extent of 98 cents fell on the share of Vadivelu and the remaining properties were with Rangasamy @ Rangan. It is a further case that, on 01.08.1956, Vadivelu had leased out the property to one Alagarathinam Chettiyar. Vadivelu seems to have passed away in the year 1967. After his death, the plaintiffs have succeeded to the estate. They have executed three mortgage deeds on 28.12.1970 in favour of one Kanakammal, on 25.05.1974 in the name of one Chinnammal and on 30.06.1983 in favour of one Gopal.

4. The defendants resist the plaintiffs' case, saying that it is true that the property had been purchased by Rangan on 22.06.1932, but, they have denied the factum of partition. They would further plead that the other property stood in the name of Kannammal and therefore, the suit for declaration for title and for injunction is not maintainable.

5. The Trial Court framed the following issues:

i. Whether the plaintiff is entitled for a relief of declaration as prayed for?



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ii. Whether the Plaintiff is entitled for a relief of permanent injunction as prayed for?

iii. To what relief?

6. Answering the issues, the Trial Court held that Ex.A1 establishes the fact that by mortgage deed dated 28.02.1970, the property had been at the enjoyment of the plaintiff and the two brothers and have been mortgaged in the year 1970 only to redeem in the year 1974. Yet again the suit property was mortgaged on the very date and therefore, the Trial Court found possession in favour of the plaintiff. The Lower Appellate Court concurred with the findings of the Trial Court and dismissed the Appeal.

7. Learned counsel for the Appellant would invite the Court to the following Substantial Questions of Law:

a) Do the Mortgage deeds (Ex.A1 to A6) can create, convey any right or title to the suit property in favour of the plaintiffs (Respondents 1 to 6) in the light of Ex.A7 Sale Deed standing in the name of the father of the Appellants herein?



*b) Are the Courts below right in presuming /
assuming of oral partition in the absence of any
evidence supporting the oral partition in the absence of
any recitals in Ex.A1 to A6?*

and would argue that the Appeal deserves admission.

8. This Court by an order dated 13.03.2007 had ordered notice regarding admission and the matter comes today before me. I have gone through the Judgments of the Trial Court and the Lower Appellate Court and heard the argument of Mr.R.Vijayaraghavan, learned counsel for the Appellant. I am not agreeing with both the questions of law framed by the Appellant for the simple reason that Exs.A1 and A3 are not ordinary mortgages but mortgages with possession. The Registered mortgages had been executed by the sons of Vadivelu viz., Marimuthu on behalf of his minor sons, Narayanan and Rangarajan on 28.12.1970. The same had been redeemed on 25.05.1974. Yet again, a mortgage deed was registered in favour of one Chinnammal by the said Rangarajan and Narayanan who had attained majority in the meanwhile. Apart from that, a decade and three



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years later another mortgage had been created in the name of Gopal by Rangarajan and Narayanan. This mortgage was redeemed seven years later under Ex.A6. These registered documents come to show that the sons of Vadivelu had exercised their rights over the property as owners and had also mortgaged and redeemed the same. As against these documents which are registered and which record the factum of handing over the possession, Vadivelu pointed out Ex.B5 (Adangal) extract issued by the Village Administrative Officer in the name of Rangan. This document had been issued just before the presentation of the plaint. It is also on record that the parties were litigating in another Suit in O.S.No.678 of 1992 on the file of the District Munsif Court, Poonamallee.

9. The question that I have to answer is whether I will believe three sets of registered documents which speaks about possession being handed over by the plaintiff as against the solitary revenue record which had been produced under in the list of O.S.No.678 of 1992. The documents Exs.A1, A3 and A5 would show that possession has all along been with the plaintiffs for more than a decade and they had also handed over possession to three parties in pursuance to the mortgages.



10. As against the registered document showing possession, I am not willing to dismiss the Suit on the ground that the Adangal extract has been issued in the name of the predecessor in title of the plaintiff viz., Rangasamy. The written statement also did not deny the fact that on 01.08.1956, Vadivelu pursuant to the partition had granted lease of the property for the period of five years in favour of one Alagarathinam Chettiyar. All the aforesaid facts show that the brothers had partitioned the property and had enjoyed the same independently. The fact that the purchase was made on 22.06.1932 in the name of Rangan, does not discourage me to hold that there was a partition between Rangasamy and Vadivelu.

11. The Trial Court as well as the Lower Appellate Court have found that the property was enjoyed in common till the partition. No evidence apart from the Kist receipt is available for dislodging the registered documents when it comes to marshalling of evidence. I therefore prefer the registered documents as against a solitary Revenue record. The two questions of law suggested do not arise for consideration in this Second Appeal. The Appeal is dismissed.



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12. The Judgment in Appeal in A.S.No.89 of 2001 dated 24.03.2004 on the file of the Principal Sub-Court, Chengalpet in confirming the Judgment Decree in O.S.No.509 of 1996 dated 05.01.2001 on the file of the District Munsif Court, Tambaram stands confirmed. This Appeal is dismissed. No Costs.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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