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Second Appeal Nos.480 and 481 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal Nos.480 and 481 of 2007

S.A.No.480 of 2007

Muthu Gounder (deceased)

1.Lakshmi Ammal

W/o Muthu Gounder

2.Munusamy

3.Rajamani

4.Gangadharan

5.Mayakannan

.... Appellants

-Vs-

Murugaiyan @ Murugesu Naicker (died)

2.Krishnaveni

3.Meenakshi

4.Saroja

5.Kuppusamy

6.Mani

7.Yuvarani

8.Jothi Lakshmi

9.Gangatharan

(R2 to R9 brought on record as LR's of deceased
sole respondent viz., Murugaiyan @ Murugesu Naicker
vide order of court dated 09.01.2020 made in CMP
No.26670 & 26672 of 2019 in SA No.480 of 2007)

.... Respondents



Second Appeal Nos.480 and 481 of 2007

S.A.No.481 of 2007

Muthu Gounder (deceased)

- 1.Lakshmi Ammal
W/o Muthu Gounder
- 2.Munusamy
- 3.Rajamani
- 4.Gangadharan
- 5.Mayakannan

... Appellants

-Vs-

- 1.Murugaiyan @ Murugesu Naicker (died)
 - 2.M.Krishnan
 - 3.Krishnaveni
 - 4.Meenakshi
 - 5.Saroja
 - 6.Kuppusamy
 - 7.Mani
 - 8.Yuvarani
 - 9.Jothi Lakshmi
 - 10.Gangatharan
- (R2 to R10 brought on record as LR's of deceased sole respondent viz., Murugaiyan @ Murugesu Naicker vide order of court dated 09.01.2020 made in CMP No.26669 & 26676 of 2019 in SA No.481 of 2007)

.... Respondents

Prayer in S.A.No.480 of 2007: Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 09.10.2006 made in A.S.No.47 of 2000 on the file of Sub Court, Arni in confirming the judgment and decree dated 31.08.2000 made in O.S.No.817 of 1996 on the file of Principal District Munsif Court, Arni.

Prayer in S.A.No.481 of 2007: Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 09.10.2006 made in A.S.No.9 of 2001 on the file of Sub Court, Arni in confirming the judgment and decree dated 31.08.2000 made in O.S.No.507 of 1996 on the file of Principal District Munsif Court, Arni.



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In Both Second Appeals

For Appellants : Mr.P.Satheesh Kumar
For Respondents : Mr.R.T.S.Kannan
for M/s.S.Umapathy – for RR 2 to 9
R1 – Dismissed

COMMON JUDGMENT

These two second appeals S.A.No.480 of 2007 and S.A.No.481 of 2007 arise out of a common judgment pronounced by both the Courts below. Hence, they are disposed of by this common judgment. The parties shall be referred as in the cause title of S.A.No.480 of 2007.

2. The first suit came to be presented by the defendant in O.S.No.507 of 1996. The said suit had been filed for a bare injunction. The claim of the plaintiff is that he had purchased the property from one Krishnan / 2nd defendant for valuable consideration on 22.06.1979. He claimed that an extent of 20 cents was left out beyond the 25 cents purchased by him. According to him, he is in possession of the said 25 cents purchased from Krishnan and the 20 cents of Poramboke land, in all 45 cents. The boundaries, according to him, given in the sale deed refers to 45 cents though what was alienated, was only 25 cents. Since he is in possession and enjoyment of the property, he moved the Court for a bare injunction restraining defendants 1 and 2 ie., his neighbour on the western side as well as his vendor, not to interfere with his peaceful possession and



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enjoyment of the property. The solitary survey number involved in O.S.No.507 of 1996 is Dry Survey No.123/15B. A written statement was filed in O.S.No.507 of 1996 by the plaintiff in O.S.No.817 of 1996. He claimed ownership with respect to Survey Nos.123/15A, 123/15C, 123/14B, 123/14A and 123/15D. According to him, the plaintiff in O.S.No.507 of 1996 had trespassed into the property situated at Survey No.123/14B to an extent of 18 feet X 20 feet and that in the presence of panchayatdars, the plaintiff had assured that he will hand over possession and did not do so. Instead, he has come forth with the suit for injunction.

3. As a plaintiff in O.S.No.817 of 1996, his plea was that he is the owner of Survey No.123/14B which is full of tamarind trees, neem trees etc., He concedes that the defendant is the adjacent owner in Survey No.123/15B. It is his case that seven years prior to the suit ie., sometime around 1990, the defendant had encroached upon the property to an extent of 18 X 20 feet which he showed as 'A', 'B', 'C' in the plaint. According to him, the portions 'A', 'B' and 'C' belongs to the plaintiff and the encroachment made by the defendant is untenable and therefore, he filed a suit for declaration of his title and for mandatory injunction. The learned trial Judge took up the suit in O.S.No.817 of 1996 as the primary suit and O.S.No.507 of 1996 as the secondary suit. The reason for doing so is because larger relief has been claimed in in O.S.No.817 of 1996 as against the bare injunction suit in O.S.No.507 of 1996.



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4. The documents were marked in O.S.No.817 of 1996 and so were the ocular evidence. The plaintiff in O.S.No.817 of 1996 examined four witnesses and marked four documents. The defendant in the said suit, who is the plaintiff in O.S.No.507 of 1996 examined two witnesses in addition to himself and marked Exs.B1 to B21. Pending the suit, an advocate commissioner was appointed to visit the suit property together with a surveyor. The report of the advocate commissioner and the plan annexed thereof were marked as Exs.C1 to C3. The learned trial Judge found that the case of the appellant (plaintiff in O.S.No.507 of 1996) is a kite flying exercise and dismissed the suit. An appeal was filed against the said decree in A.S.No.9 of 2001 before the Sub Court at Arni and it met with the same fate. Aggrieved by the same, the appellant has preferred S.A.No.481 of 2007. The following substantial question of law had been framed by this Court on 25.04.2007.

“Whether the Courts below have failed to appreciate the material evidence on record with regard to the possession of the suit property in proper perspective and erred in dismissing the suit?”

5. Expanding on the question of law, the learned counsel for the appellants would submit that, without appreciating the evidence in proper



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perspective, the trial Court and the lower Appellate Court had ignored Ex.B22 and had erroneously dismissed the suit. He would state that even at the time of his purchase from the 2nd defendant, he had encompassed 20 cents abutting his 25 cents purchased from the 2nd defendant. He would rely upon Ex.B22, a patta granted in his favour. Ex.B22 is a 'Thoraaya Patta (தோராய பட்டா)' a post suit document. The trial Court having the benefit of seeing the witnesses, has returned a finding that the same had come into force pending the suit. Being a post suit document, the trial Judge rightly ignored it. There being no other evidence to prove the possession of the plaintiff over the suit schedule property, dismissed the suit. The lower Appellate Court also has confirmed the same. Apart from Ex.B22, no other document is forthcoming to prove the possession of the plaintiff over the suit schedule property. I feel both the Courts have rightly appreciated the evidence holding that an after suit document cannot be relied upon for the purpose of granting a decree and have rightly dismissed the suit. Therefore, the question of law is answered against the appellant and in favour of the respondent and Second Appeal No.481 of 2007 is dismissed with costs.

6. Turning to Second Appeal No.480 of 2007, this is a suit for declaration of title. It is the case of the plaintiff in O.S.No.817 of 1996 that the property had ancestrally vested with them and this is clear from the boundary recitals in the sale deed dated 22.06.1979 executed by the 2nd defendant in O.S.No.507 of



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1996 in favour of the plaintiff – Ex.B1. Apart from this, he would rely upon the patta granted by the revenue authorities in order to assert the title over the property. The patta has been granted under Ex.A1. In other words, the learned counsel for the respondent in S.A.No.480 of 2007, who is the plaintiff in O.S.No.817 of 1996 would want this Court to grant him declaration of title on the basis of boundary recitals and the patta under Ex.A1.

7. The following substantial questions of law had been framed by this Court on 25.04.2007.

“(1) Whether the Courts below are right in declaring the title of the plaintiff to the suit property in the absence of any document of title?

(2) Whether the Courts below have erred in ignoring the bar of limitation when the admitted case of the plaintiff is that the construction was put by the defendant more than seven years before the filing of the suit?

(3) Whether the Courts below have erred in granting the decree for permanent injunction in the absence of evidence for encroachment?”



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8. There is some doubt as to whether the 20 cents abutting the property is a poramboke land or a patta land. When there is a cloud, it is the duty of the plaintiff in O.S.No.817 of 1996 to come forth with specific pleading as to how he traces the title to the property and not base his case only on the revenue records alone. Revenue record is not a document of title. Further more, the boundary recitals speak about Vellavari channel and Madhava Naicker's property.

9. A boundary recital is given for the purpose of identification of the property and will be binding inter se the vendor and the vendee and might at best, act as an estoppel against the vendee to claim any portion beyond the schedule of property. A boundary recital cannot be stretched so far to confer a title in the name of the person, whose name is set forth, in the schedule. That will be stretching the position a bit too far which I am not willing to do. Both the Courts below approached the suits in a manner that since O.S.No.507 of 1996 was dismissed, the suit filed in O.S.No.817 of 1996 was decreed. They have not analysed the four documents filed by the plaintiff in proper light and perspective. None of the documents filed by the plaintiff give him any right over Survey No.123/14B especially when the pleading is that 20 cents to the east of Survey No.123/15B could be poramboke land. I am not persuaded to grant a declaration of title in favour of the plaintiff in O.S.No.817 of 1996 as he has not produced any title document to substantiate his case.



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10. Insofar as the relief of mandatory injunction is concerned, I should add that the plaint itself concedes to the fact that the encroached portion ie., the house property had been constructed seven years prior to the presentation of the plaint. For the relief of mandatory injunction, a party must approach the Court without any delay. It is trite that delay defeats injunction. The plaintiff in O.S.No.817 of 1996 had approached the Court only as a counter blast to the suit in O.S.No.507 of 1996. This shows that he did not show a sense of urgency but was complacent with the state of things. Law does not come to aid the person who is dormant. Therefore, I am not inclined to grant the relief of mandatory injunction also. I hold that in the absence of any document of title, the Court below erred in granting title to the plaintiff and also the relief of mandatory injunction sought after seven years is untenable. Granting a decree of title on the basis of revenue records is a perversity, which requires interference at my hands and a perverse judgment can be interfered under Section 100 of Civil Procedure Code and therefore I am doing so.

11. In fine, I answer the substantial questions of law 1 and 2 in favour of the appellant and as against the respondent and I am allowing the appeal. As the plaintiff in O.S.No.817 of 1996 had succeeded before the Courts below, I am not awarding any costs.



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12. To conclude, Second Appeal No.480 of 2007 is allowed. The judgment and decree made in A.S.No.47 of 2000 on the file of the Sub Court Arni dated 09.10.2006 in confirming the judgment and decree made in O.S.No.817 of 1996 on the file of the Principal District Munsif Court, Arni dated 31.08.2000 is set aside. The suit shall stand dismissed. No costs.

13. Second Appeal No.481 of 2007 stands dismissed confirming the judgment and decree in A.S.No.9 of 2001 dated 09.10.2006 on the file of the Sub Court, Arni in confirming the judgment and decree in O.S.No.507 of 1996 dated 31.08.2000 on the file of the Principal District Munsif Court, Arni. This suit too shall stand dismissed. Costs throughout.

17.03.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

- 1.The Sub Judge, Arni.
- 2.The Principal District Munsif, Arni.



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V.LAKSHMINARAYANAN, J.

KST

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