



S.A.No.860 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2023	Delivered on : 20.12.2023
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CORAM

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.860 of 2007
and M.P.No.1 of 2007

1.Rukmani Ammal
2.K.Krishnasamy
appellants

...

-Vs-

1.Palaniappan
2.Rangasamy
3.Palanisamy

... Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.02.2006 in A.S.No.48 of 2005 passed by the learned II Additional Subordinate Judge, Coimbatore, reversing the judgment and decree dated 30.03.2005 in O.S.No.54 of 1996, passed by learned III Additional District Munsif, Coimbatore.

For appellants	: Mr.S.Subbiah, Senior Counsel for Mr.P.Raja
For R1 & R2	: Mr.S.Sabarish for M/s.S.Kingston Jerold
For R3	: Mr.Devaraj for Mr.D.Veerasekaran.



S.A.No.860 of 2007

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JUDGMENT

The instant second appeal has been filed at the instance of the plaintiffs. The respondents herein are the defendants 1, 2 and 4 before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which give rise to the instant second appeal, are as follows:

3(a). The first plaintiff is the mother of the second plaintiff. The defendants are brothers, and all of them are sons of one Late.Nalla Varada Konar. According to the plaintiffs, the first plaintiff purchased landed property on 30.12.1981, for an extent of one acre and 17 cents comprised in S.F.No.146/2A together with half of 3/8 rights in the common well, kalam, channal, etc., from one Tmt.Zulekabi. On the same day, the second plaintiff purchased property to an extent of one acre and



S.A.No.860 of 2007

WEB COPY

17 cents in the very same survey number i.e.S.F.No.146/2A from the same vendor alongwith 3/8 rights in kalam, well, channel, etc. While executing the sale deeds, there was a mistake in describing the survey field numbers as well as boundaries. Hence, on 15.10.1985, the plaintiffs' predecessor-in-title executed a rectification deed, thereby correcting the mistake found in the sale deed executed in favour of the first plaintiff. On 22.05.1987, the second plaintiff purchased property to an extent of 13¼ cents comprised in S.F.No.142/2A together with 1/5th rights in the common well, kalam, channal, etc. By virtue of the said three sale deeds, they are entitled to an extent of 2 acres and 34 cents and have a right of 23/40 shares in the well, channel and kalam.

3(b). While so, the defendants purchased land comprised in S.F.No.146/2 under the sale deed dated 23.02.1968. As per the said sale deed, the defendants got ¼ share in the kalam, wari, vaikkal. The said kalam, wari and vaikkal were situated in S.F.No.146/2C2 and the total extent of S.F.No.146/2C2 is 32 cents. According to the plaintiffs, they were the joint owners of the lands in S.F.No.146/2C1 and 146/2C2



S.A.No.860 of 2007

alongwith the defendants. Thus, the plaintiffs are entitled to 23/40 share in S.F.No.146/2C1 and S.F.No.146/2C2 alongwith easementary rights attached there to such as common cart track, well, etc. Hence, the plaintiffs has come forward with the suit for the relief of declaration to declare the plaintiffs are also the joint owners of the landed properties to an extent of 32 cents comprised in S.F.Nos.146/2C1 and 146/2C2 and for a consequential permanent injunction from interfering with the user and rights of the plaintiffs over the cart track in S.F.No.142/2C.

4. The said suit was resisted by the defendants by disputing the contentions made in the plaint. It is their specific submission that the plaintiffs' predecessors-in-title had no right to execute any rectification deed in respect of S.F.Nos.146/2C1 and 146/2C2. The defendants disputed the alleged joint ownership pleaded by the plaintiffs over the above survey numbers. Further, the suit properties in S.F.Nos.146/2C1 and 146/2C2 are the absolute properties of the defendants and they have been in the actual physical possession of the suit property since 1968. Hence, they prayed to dismiss the suit.



S.A.No.860 of 2007

WEB COPY

Evidence and documents submitted before the Trial Court:

5. Before the Trial Court, on behalf of the plaintiffs, the second plaintiff himself was examined as P.W.1 and three more witnesses, viz., Mr.K.S.Thangavel, Mr.A.Subramaniam and Mr.Sivaganesh were examined as P.W.2 to P.W.4. Fourteen documents were marked as Exs.A1 to A14. On behalf of the defendants, second defendant himself was examined as D.W.1, and 7 documents were marked as Exs.B1 to B7. As Court Documents, three documents were marked as Exs.C1 to C3.

Findings of both the Courts below:

6. The Trial Court, after having gone through the oral and documentary evidence, believed Ex.A3/rectification deed, granted the relief of declaration and permanent injunction and also decreed the suit as prayed for. Aggrieved by the same, the defendants preferred an appeal before the First Appellate Court. The First Appellate Court, reversed the findings on the ground that the plaintiffs' predecessors-in-title had no right, title and ownership over the suit properties in S.F.Nos.146/2C1 and



S.A.No.860 of 2007

146/2C2, and ultimately allowed the appeal by dismissing the suit.

Challenging the same, the plaintiffs are now before this Court by way of this second appeal.

Substantial questions of law:

7. At the time of admission on 22.08.2007, this Court framed the following substantial questions of law:

“1. Whether the First Appellate Court erred in not considering the plea of the defendants in their written statement that the plaintiff, appellant herein has an easementary right over the suit item No.2 of the property and by reversing the finding of the Trial Court?

2. Whether the First Appellate Court erred in reversing the finding of the Trial Court with regard to its finding on the rights of the parties as determined by the Trial Court based on Ex.B2 joint patta without any reason?”

Submissions made by both sides:

8. The learned Senior Counsel appearing on behalf of the



S.A.No.860 of 2007

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appellants/plaintiffs would contend that by virtue of Ex.A3/rectification deed, the plaintiffs are the owners of the suit properties and that by virtue of Section 8 of the Transfer of Property Act, 1882, when the properties are purchased, the said purchase would include all easementary rights attached to the said properties, unless difference intention is expressed. Hence, contended that the plaintiffs are entitled for declaration as prayed for. It is also contended by the learned Senior Counsel that by virtue of Ex.A3/rectification deed, the mistake committed in Exs.A1 and A2/sale deeds were rectified and therefore, the plaintiffs are the absolute owners of the suit properties. Hence, he prayed to allow this second appeal by setting aside the judgment rendered by the First Appellate Court.

9. Per contra, the learned counsel for the respective respondents/defendants would vehemently submit that the plaintiffs' predecessors-in-title have no right, title or ownership in respect of the suit properties and that the alleged easementary rights, which are said to have been available in S.F.No.142/2C, have not at all been transferred to the plaintiffs. Therefore, contended that the plaintiffs are not entitled to have



S.A.No.860 of 2007

the suit decreed as prayed for. It is the further submission of the learned counsel for the respondents that the finding of fact recorded by the First Appellate Court is based on evidence and law. Hence, prayed to dismiss this second appeal.

10. This Court has given its anxious consideration to the submissions made by both sides.

Analysis of the submissions:

11. If this Court scans the prayer of the suit, the plaintiffs sought the relief of declaration in respect of S.F.Nos.146/2C1 and 146/2C2, which were described as the item nos.1 and 2 in the description of properties. According to the plaintiffs, they derived title to the above properties only through Exs.A1 to A2/sale deeds executed by one Tmt.Zulekabi on 30.12.1981. Admittedly, S.F.Nos.146/2C1 and 146/2C2 were not mentioned in Exs.A1 and A2/sale deeds. According to the plaintiffs, when they had come to know about the said mistake, the predecessor-in-title executed Ex.A3/rectification deed on 15.10.1985. In



S.A.No.860 of 2007

WEB COPY

the said rectification deed, it has been stated that instead of S.F.Nos.146/2C1 and 146/2C2, a wrong survey number viz., S.F.No.146/2B had been given in Exs.A1 and A2/sale deeds, which necessitated the plaintiffs to obtain the Ex.A3/rectification deed.

12. At this juncture, the learned counsel for the respective respondents/defendants would invite the attention of this Court about Ex.B5/Partition deed, and Ex.B6/Sale deed executed by one Tmt.Zaharunnisa, whereby an extent of 24 cents was sold to some third party viz., Mr.Duraisamy on 06.12.1980 prior to the sale in favour of the plaintiffs under Exs.A1 and A2/sale deeds. It is the finding of the First Appellate Court that the said Tmt.Zaharunnisa had already executed a sale deed in respect of S.F.No.146/2C2 to an extent of 24 cents to the said Mr.Duraisamy through Ex.B6/sale deed.

13. Further, it is also the finding of the First Appellate Court that in Ex.B5 viz., partition deed, by and in which, the said Tmt.Zaharunnisa was allotted 'B' schedule to the partition deed. As per 'B' schedule



S.A.No.860 of 2007

property, she had acquired the property to an extent of 3 acres and 6 cents in S.F.No.146/2A, and 24 cents in S.F.No.146/2C2. Wherein that 'B' schedule property has no reference about the easementary rights of S.F.Nos.146/2C1 and 146/2C2. However, the father of the plaintiffs' predecessors-in-title viz., Haji Mohammed Ali Ahmed Sahib, was having only 32 cents in S.F.Nos.146/2C2 and out of which, he had sold an extent of 8 cents to the defendants by virtue of Ex.B3/sale deed, and the remaining 24 cents in S.F.No.146/2C2 as stated supra, were allotted to the said Ms.Zaharunnisa. Further, she had sold the said property to one Mr.Duraisamy under Ex.B6/sale deed. Therefore, it is the finding of the First Appellate Court that the said Tmt.Zulekabi had no right or ownership to execute the rectification deed in respect of S.F.Nos.146/2C1 and 146/2C2 as it was not belongs to her. The said finding is a well merited finding that too based upon the documents. It is also the finding of the First Appellate Court that the plaintiffs' predecessor-in-title was not at all allotted with any right in respect of cart track in S.F.No.146/2C2.

14. However, the learned Senior Counsel appearing on behalf of



S.A.No.860 of 2007

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the appellants/plaintiffs would rely upon the judgment rendered by this Court in the case of ***Chinna Poojari vs. K.Ramasami*** [reported in ***MANU/TN/8193/2007***] and would contend that when there was a cart track used by public as a mamool pathway, then everyone has got right to use the same.

15. In this regard, the learned counsel for the respondents/defendants would submit that they are not disputing the usage of public passage whereas the plaintiffs had come forward with the suit in respect of the suit properties and that they have miserably failed to prove that they have got title over the suit properties. Therefore, this Court of the view that the above ruling has no application in the present case.

16. Further, the learned senior counsel for the appellants/plaintiffs relied upon the judgment of this Court in the case of ***P.Pannerselvam vs. M.Govindasamy (died)*** [reported in ***2021 (3) CTC 437***] and would contend that merely on technical ground that the relief



S.A.No.860 of 2007

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19. In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.12.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The II Additional Subordinate Judge, Coimbatore,
2. The III Additional District Munsif, Coimbatore,
3. The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.



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S.A.No.860 of 2007

apd

S.A.No.860 of 2007
and M.P.No.1 of 2007

20.12.2023