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SA.No.9 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.9 of 2006

1. V.Palanisami Gounder (died)
2. V.Krishnasamy Gounder (died)
3. P.Ponnusamy
S/o.V.Palanisami Gounder
4. K.Thirumoorthy
S/o.V.Krishnasamy Gounder
(Appellants 3 & 4 brought on record as LR's of
the deceased 1st and 2nd appellants vide order dated 06.12.2012
made in CMP.Nos.1910, 1911, 1913 & 1914/2010)

... Appellants

- Vs -

1. Sakunthala (Died)
2. Tahsildar,
Coimbatore North Taluk Office,
Balasundaram Road,
Coimbatore-18.
3. Revenue Divisional Officer,
Coimbatore Office,
State Bank Road,
Coimbatore.
4. R.Premalatha
D/o.Sakunthala
5. R.Neehla
D/o.Sakunthala
6. M.Padmini
D/o.Sakunthala
7. Malarkodi
W/o.Rajendran



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8. R.Radhika

D/o.Rajendran

9. R.A.Karthick

S/o.Rajendran

(R4 to R9 brought on record as LR's of the deceased R1

vide order dated 26.10.2022 made in CMP.No.1096/2022)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the II Additional Subordinate Judge's Court at Coimbatore dated 29.07.2005 in A.S.N.3 of 2004 partly reversing the judgment and decree of the II Additional District Munsif Court at Coimbatore dated 22.01.2004 in O.S.No.1759 of 1999.

For Appellants : Mr.P.Valliappan

Senior Counsel

for Mr.G.RM.Palaniappan

For Respondents : Dr.S.Suriya

Additional Govt. Pleader for R2 & R3

Mr.S.Mukunth

Senior counsel

for M/s.Sarvabhauman Associates

for R4 to R9

R1-died.

JUDGMENT

The appellants herein are the plaintiffs before the Court below. The respondents are the defendants before the Court below.

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



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

3. Originally the suit property belongs to one K.Ramaswami Gounder and the plaintiffs' predecessor-in-title. The said K.Ramaswamy Gounder had acquired the title over the property under two sale deeds dated 21.12.1967 & 18.02.1969 respectively. K.Ramaswami Gounder father's name was Kuppanna Gounder. According to the plaintiffs, after the purchase of the suit property, they continued the possession of the property from their predecessor-in-title. The suit property in S.F.No.524/2D is an extent of 74 cents. Subsequently, S.F.No.524/2D was sub-divided as S.F.No.524/2A and 524/2C. The entire extent of S.F.No.524/2D was sold to one Mr.K.Ramasamy by one Mr.S.Ramaswamy and his sons, under the sale deed dated 18.02.1969. According to the plaintiff, the 1st defendant had at no point of time either had title or possession of any of the portion of the 74 cents of land. The plaintiff further submitted that they have also entered into a partition in respect of their family property which includes this suit property. Therefore, this plaintiff prays for the relief of declaration of their title of entire suit property, and for an injunction restraining the defendants from proceeding with the patta transfer enquiry.



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4. The above said suit was resisted by the 1st defendant, by contending that an extent of 74 cents of land in S.F.No.524/2D, Nanjundapuram Village, Coimbatore was originally belonged to one Mr.Singae Gounder. The said Mr.Singae Gounder has two sons viz., Mr.Rangae Gounder and Mr.Ramasamy Gounder. According to this defendant, the sons of Singae Gounder effected a partition among themselves by virtue of Partition Deed dated 01.11.1951, by and in which amongst the other lands, an extent of 74 cents in S.F.No.524/2D was also partitioned.

5. As per the above position, Rangae Gounder and Ramasamy Gounder were each allotted 1.63 acres of land in various survey numbers including in S.F.No.524/2D. In the said partition, in S.F.No.524/2D from and out of the 74 cents of the land, Rangae Gounder was allotted 14 cents of land under schedule A. Similarly, Ramasamy Gounder was allotted the remaining 60 cents of land under Schedule B.

6. Since then, the respective parties and their successors in intetest have been in possession and enjoyment of the respective properties. Therefore, according to this defendant, an extent of 14 cents in S.F.No.524/2D belongs to the defendant by virtue of the Sale Deed dated 09.12.1987. Therefore, this defendant submits that in respect of the 14 cents,



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the plaintiffs cannot have any declaration and prayed to dismiss the suit.

7. The 2nd defendant, being official defendants, has also filed a counter statement disputing the plaint averments and would further submit that, the plaintiffs have to move an appropriate statutory appeal remedy in respect of the order passed by the Tahsildar, instead of filing a suit.

Evidence, Documents and Finding of the both the Court below:-

8. Before the Trial Court, the plaintiffs have marked as many as 25 documents as Exs.A1 to A25 and examined 3 witnesses as PW1 to PW3. On behalf of the defendants, 7 documents have been marked as Ex.B1 to B7 and 2 witnesses were examined as DW1 & DW2.

9. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court dismissed the suit in its entirety agreeing with the defence of the defendants. Aggrieved with the said order, when the plaintiffs filed an appeal, the First Appellate Court has partly allowed the appeal with the finding that, since the first defendant has got title over 14 cents of property in S.F.No.524/2D, had granted decree to the plaintiffs to the remaining extent of 60 cents. Aggrieved with the same, the plaintiffs have approached this Court by way of this appeal.



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Substantial Question of law:

10. At the time of admission , this Court has formulated the following substantial question of law:-

“1) When the appellants had established their right and title regarding the entire extent of 74 cents by producing documents of title as well as revenue records, whether the Lower Appellate Court is correct in law in granting decree with respect to only 60 cents?

2) When Ex.A16 sub division proceedings dated 31.01.1985 has not been assailed by the first respondent within the period of limitation provided under the Tamil Nadu Surveys and Boundaries Act, whether she is entitled to claim title to 14 cents in the suit property?”

Submission of either side counsel:-

11. Heard Mr.P.Valliappan, the learned Senior Counsel appearing on behalf of the appellants, Dr.Suriya, learned Additional Government Pleader appearing for the respondents 2 & 3, and Mr.S.Mukunth, learned Senior Counsel appearing on behalf of the respondents 4 to 9.

12. The learned Senior Counsel appearing on behalf of the appellants, with great deft would submit that the lower Appellate Court has placed the reliance upon Exs.B1 to B3, overlooking the fact that all those documents are



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only a photo copy. It is the specific submission of the learned Senior Counsel that only the documents Exs.A1 to A3 refer about the total extent of 74 cents. Therefore, contended that the findings given by the First Appellate Court that the plaintiffs have got only 60 cents over the S.F.No.524/2D is irrational and contrary to the sale deeds and Revenue records.

13. Per contra, the learned Senior counsel appearing on behalf of the respondents 4 to 9, in his usual dexterity, would contend that originally the suit property belonged to one Singae Gounder, and that he got 2 sons by name Rangae Gounder and Ramasamy Gounder, and that the children of Sangae Gounder has divided the property under Ex.B1. In Ex.B1, the plaintiffs' predecessor-in-title S.Ramaswamy Gounder was allotted 60 cents in S.F.No.524/2D as B Schedule property, and that the 1st defendant's predecessor-in-title Rangae Gounder was allotted A Schedule property consists of 14 cents in S.F.No.524/2D. Therefore, would contend that, when the plaintiffs' predecessor-in-title did not have title over and above the extent of 60 cents in S.F.No.524/2D, he cannot transfer the tile of the larger extent of 74 cents of the property. Hence, prayed to dismiss the Second Appeal.

14. I have given my anxious consideration to either side submissions.



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Analysis of the submissions:-

15. In order to decide the first substantial question of law, it is relevant to refer Ex.B1 viz., the partition deed between the sons of Singae Gounder qua Rangae Gounder and S.Ramasamy Gounder. The original ownership over the suit property is not in serious dispute. The suit property to an extent of 74 cents admittedly were belong to Singae Gounder, which was admittedly partitioned under Ex.B1. While perusing the sale deed-Ex.A4, the predecessor-in-title of the first plaintiff one K.Ramasamy Gounder has purchased the suit property from his predecessor-in-title S.Ramaswamy Gounder, who was the son of Late Mr.Singae Gounder. The said S.Ramaswamy Gounder, who was the original predecessor-in-title of the 1st plaintiff, under Ex.B1-Partition Deed was allotted only 60 cents in S.F.No.524/2D, which factum was rightly relied by the First Appellate Court.

16. At this juncture, it is pertinent to mention here that the 1st defendant's predecessor-in-title Marudappa Gounder, has purchased the portion of the suit property from his predecessor-in-title one S.Rangae Gounder under Ex.B2-Sale Deed. The Marudappa Gounder's predecessor-in-title qua S.Rangae Gounder, is also the son of Singae Gounder. The first



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defendant's predecessor-in-title S.Rangae Gounder was allotted 14 cents in S.F.No.524/2D in the Ex.B1-Partition Deed.

17. In fact, Ex.B1 was marked through PW1. Though the marking of such document was objected by the plaintiffs, this Court could not find any justification for the said objection as PW1 has elusively replied that he did not aware about his title in S.F.No.524/2D is only to an extent of 60 cents. Therefore, the First Appellate Court has rightly relied upon Ex.B1-Partition Deed, which is parental deed for both plaintiff and 1st defendant. In the absence of any contra evidence to Ex.B1, the submissions made by the learned Senior Counsel appearing on behalf of the appellants to rely upon the Revenue records cannot be accepted at all. In fact the Ex.B1 to B3 are certified copy of the documents.

18. It is pertinent to mention here that the Revenue records are not the documents for title. Therefore, the finding of fact recorded by the First Appellate Court relying upon Ex.B1 is liable to be confirmed.

19. At this juncture, the learned Senior Counsel appearing on behalf of the respondents would invite the attention of this Court that the grounds of appeal raised by the plaintiffs before the First Appellate Court would vindicate the defendant's case. While perusing the judgment of the First



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Appellate Court, the First Appellate Court in paragraph 7 discussed the grounds of appeal, in which one of the grounds urged by the plaintiffs was adverse possession in respect of the remaining 14 cents of property in S.F.No.524/2D. First of all, in the plaint, there is no such pleading raised by the plaintiffs. To crown it all, such grounds of appeal would strengthen the case of the defendant and the finding recorded by the First Appellate Court. Therefore, this Court could not find any justification in interfering with the well merited finding of the First Appellate Court.

20. In view of the above discussion, the substantial question of law are answered in favour of the respondents. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

03.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The II Additional Subordinate Judge,
Coimbatore.
2. The II Additional District Munsif,
Coimbatore.



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C.KUMARAPPAN,J

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