



S.A.No.1338 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1338 of 2004
and C.M.P.No.20447 of 2021

1.Dhanabakkiyam (died)

2.K.Vembi

3.V.Jothi

4.P.Suseela

5.V.Subramaniam

... Appellants

(A2 to A4 brought on record as LR's of the deceased

A1 vide Court order dated 12.08.2022 made in

C.M.P.No.10311 of 2022 in S.A.No.1338 of 2004.

R3 transposed as A5 vide Court order dated 12.08.2022

made in C.M.P.No.10311 of 2022 in S.A.No.1338 of 2004)

-Vs-

1.Arumuga Gounder (died)

2.A.Subramaniam

3.Panjalai

4.Kaliyaperumal

5.Ammavasai

6.Murugan

7.Kanammal

8.Poonga

... Respondents

(R3 to R8 brought on record as LR's of the deceased

first respondent vide Court order dated 07.09.2022

in C.M.P.No.21023 of 2021 in S.A.No.1338 of 2004)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.03.2003 in A.S.No.151 of



S.A.No.1338 of 2004

2002 passed by the learned Additional District Judge (Fast Track Court), Kallakurichi, reversing the judgment and decree dated 22.02.1996 in O.S.No.228 of 1993 passed by the learned Principal District Munsif, Kallakurichi.

For appellants 2 to 5 : Ms.T.R.Gayathri
for M/s.Sarvabhauman Associates

For respondents 2, 4 to 8 : Mr.G.Ethirajulu

For respondent 1 : Died (steps taken)

Respondent 3 : Transposed as A5
vide Court order dated 12.08.2022.

J U D G M E N T

The instant second appeal has been filed at the instance of the first defendant.

2. Initially, the second defendant arrayed as the third respondent in this second appeal. Subsequently, he was transposed as the fifth appellant as one of the legal heirs of the sole appellant/defendant.

3. The respondents herein were the plaintiffs before the Trial Court. After the death of the first respondent/first plaintiff, his legal heirs were impleaded as respondents 3 to 8.



S.A.No.1338 of 2004

WEB COPY

4. 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:

5. A part of the suit property originally belonged to the plaintiffs' family. One part of the suit property was purchased by the first plaintiff's father Mr.Ammasi Gounder and another part was purchased by the brother of the first plaintiff viz., Mr.Periyasamy Gounder from the first defendant's husband as well as the father of the second defendant viz., Mr.Vaiyapuri Mooppar vide two separate sale deeds dated 10.01.1957 and 06.11.1971, respectively. Since one Ms.Muthambal was also had a share in the suit property, even from her, the family of the plaintiffs obtained a sale deed on 07.05.1991. As such, the plaintiffs are the absolute owners of the suit property. Hence, they came forward with the suit for the relief of permanent injunction in respect of the suit property.



S.A.No.1338 of 2004

WEB COPY

6. The said suit resisted by the defendants by contending that though there were two sale deeds executed on 10.01.1957 and 06.11.1971, the said sale deeds did not come into force and that the suit property belonged to them. According to the defendants, the said Ms.Muthambal had no right over the suit property. Hence, they prayed to dismiss the suit.

7. It is pertinent to mention here that at the second appeal stage, the plaintiffs filed an application in C.M.P.No.20447 of 2021 under Order XLI Rule 27 of the Civil Procedure Code to receive following additional documents:

(a) 06.05.1992 – Certified copy of the Registered Exchange Deed executed between the sons of Ammasi Goundar viz., Ganapathi Goundar, Arumugal Goundar and Chinnathambi Goundar issued by SRO, Rishivanthiyam.

(b) Certified copy of the Adangal Register prepared under Natham Settlement Plan in respect of suit property issued by Village Administrative Officer, Rishvanthiyam.



S.A.No.1338 of 2004

(c) FMB Sketch of S.No.401 issued by Village Administrative Officer, Rishvanthiyam.

WEB COPY

Evidence and documents:

8. On behalf of the plaintiffs, the first plaintiff examined himself as P.W.1 and four documents were marked as Exs.A1 to A4. On behalf of the defendants, the first defendant examined himself as D.W.1 and two more witnesses viz., Mr.Thandapani and Mr.Masilamani were examined as D.W.2 and D.W.3, respectively and three documents were marked as Exs.B1 to B3.

Findings of the Trial Court:

9. The Trial Court, after having considered the oral and documentary evidence, came to a conclusion that the plaintiffs did not establish their possession in the suit property and ultimately dismissed the suit by the judgment dated 22.02.1996. Aggrieved by the same, the plaintiffs preferred an appeal before the First Appellate Court. The First Appellate Court came to a conclusion that by virtue of the two sale deeds dated 10.01.1957 and 06.11.1971, the plaintiffs had entitled to an extent of 30x30 sq.ft, and partly allowed the appeal and granted permanent



S.A.No.1338 of 2004

injunction in respect of 30x30 sq.ft, even if the plaintiffs claimed the relief in respect of 30x40 sq.ft in the suit property. Challenging the same, the defendants are now before this Court by way of this second appeal.

Substantial questions of law:

10. At the time of admission on 06.08.2018, this Court framed the following substantial question of law:

“Whether the Lower Appellate Court is correct in law in decreeing the suit for bare injunction, especially when the respondents 1 and 2 have failed to establish their alleged possession of the suit property on the date of the suit?”

Submissions on both sides:

11. The learned counsel for the appellants/defendants would vehemently contend that the judgment rendered by the First Appellate Court is without any basis. It is the further contention of the learned counsel that the description of the suit property referred to in the suit varied and that the description of the suit property mentioned in the judgment of the First Appellate Court did not tally with any of the



S.A.No.1338 of 2004

supporting documents. Hence, she prayed to allow this second appeal.

12. Per contra, the learned counsel for the respondents/plaintiffs would submit that by virtue of Exs.A1 and A2/sale deeds, the plaintiffs are the absolute owners of the suit property, that only by adding the measurement of both Exs.A1 and A2/sale deeds, the First Appellate Court granted a decree for permanent injunction. Therefore, the learned counsel would submit that there is no ground to interfere with the judgment rendered by the First Appellate Court. Hence, he prayed to dismiss the second appeal.

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

Analysis of the submissions:

14. The only contention of the learned counsel for the appellants/defendants is that the said sale deeds dated 10.01.1957 and



S.A.No.1338 of 2004

06.11.1971 never came into force.

WEB COPY

15. On the contrary, the learned counsel for the respondents/plaintiffs would submit that the defendants have admitted the sale of the properties through Exs.A1 and A2/sale deeds.

16. Therefore, this Court is of the firm view that the finding rendered by the First Appellate Court that by virtue of Exs.A1 and A2/sale deeds, the plaintiffs have got title over the suit property upto the extent of 30x30 sq.ft. is perfectly in order. Though this Court fully concurs with the finding rendered by the First Appellate Court, while reading the judgment rendered by the First Appellate court, this Court could not find as to how the First Appellate Court was able to grant permanent injunction to an extent of 30x30 sq.ft. Therefore, though the finding in respect of Exs.A1 and A2/sale deeds is perfectly in order, the measurement of the property and its boundary has not been explained or cited anywhere in the judgment of the first Appellate Court. Therefore, if the decree is allowed to continue based upon the title deed without having



S.A.No.1338 of 2004

any correct description of lesser portion of 30 x 30 ft., it would be difficult for execution and will cause utter confusion. Therefore, this Court is of the firm view that the decree granted by the First Appellate Court is liable to be interfered with.

17. At this juncture, the learned counsel for the respondents/plaintiffs would submit that they have moved an application to receive additional documents to further substantiate their case to have the decree of injunction in respect of the entire suit property.

18. It is a well settled principle of law that the relief under Order XLI Rule 27 of C.P.C is an exceptional relief and the said relief cannot be availed by the parties only to fill up the lacunas. It is also pertinent to mention here that the suit was of the year 1993 and the respondents/petitioners have filed this application after two decades only at the second appeal stage during 2021. Therefore, this Court could not find any justification in allowing this application to receive additional documents.



S.A.No.1338 of 2004

WEB COPY

19. In view of the above discussion, the substantial question of law is answered in favour of the appellants. In the result, this second appeal is allowed by setting aside the order of the First Appellate Court and restoring the order of the dismissal passed by the Trial Court. The connected miscellaneous petition in C.M.P.No.20447 of 2021 is dismissed. 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 Additional District Judge (Fast Track Court), Kallakurichi.
2. The Principal District Munsif, Kallakurichi.
3. The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.

apd



WEB COPY



S.A.No.1338 of 2004

S.A.No.1338 of 2004
and C.M.P.No.20447 of 2021

20.12.2023