



S.A.No.1054 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.07.2023

Delivered on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.1054 of 2010
and M.P. No.1 of 2010

Ramasamy Gounder (died)

1.Saraswathi

2.Venkatesan

3.Srinivasan

(Appellants 1-4
bought on record as
LR's of the deceased
plaintiff)

... Appellants

Vs.

1.Kandasamy

2.Malarkodi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree passed dated 28.11.2008 passed in A.S.No.47 of 2004 on the file of Additional Sub-Court Vriddhachalam, in confirming the judgment and decree dated 06.04.2004 passed in O.S.No.284 of 1996 on the

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file of the District Munsiff cum Judicial Magistrate Court at Thittakudi.]

For Appellants : Mr.V.Anand

For Respondents : Mr.S.Senthil Nathan

JUDGMENT

The legal heirs of the deceased plaintiff are before this Court as appellants in the Second Appeal. Originally, the sole plaintiff, one Mr.Ramaswamy Gounder filed the suit seeking declaration of his possessory rights over the suit schedule property. His case before the Trial Court was that he was in possession of 4 items of suit property and he was carrying on cultivation and that the defendants had no right, title or interest over the suit items and that the defendants were openly claiming to encroach into the suit items by using violence. Under such circumstances, the suit for Declaration with a consequential relief of Permanent Injunction, as well as an alternate Relief of Recovery of Possession was filed.

2. The 1st defendant filed his Written Statement and the same was adopted by the 2nd defendant. The defendants contended that they were not



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concerned with items 1,2 and 4. However, insofar as Item-3 of the suit property was concerned, the defendants set up a plea of an unregistered sale in favour of the 2nd defendant, consequent to which possession was also delivered to the 2nd defendant. It was the further case of the defendants that the 2nd defendant has been in enjoyment and possession of the said Item No.3 of the suit schedule property, and even the Government, recognizing the possession of the 2nd defendant had issued a 'B' Memo. The plaintiff's claim that the plaintiff has been in possession of Item No.3 of the suit scheduled property had been stoutly denied. The suit was therefore sought to be dismissed.

3. Before the Trial Court, the plaintiff examined himself as PW-1, besides examining two independent witnesses as PW-2 and PW-3. On the side of the plaintiff, exhibits A-1 to A-9 were marked. On the side of the defendants, the 1st defendant examined himself as DW-1, 2nd defendant examined herself as DW-2 and two other witnesses were examined as DW-3 and DW-4. On the side of the defendants exhibits B1 to B4 were marked.



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4. The Trial Court decreed the suit as prayed for, granting a decree for Declaration and Permanent Injunction.

5. Aggrieved by the same, the defendants filed A.S.No.47 of 2004 before the Additional Sub-Court, Viruthachalam. The said Appeal came to be allowed in so far as Item-3 of the Suit Schedule Properties alone. As against the First Appeal being partly allowed, the legal heirs of the sole plaintiff, since deceased, have filed the present Second Appeal.

6. At the time of admission of this second appeal the following substantial questions of law have been framed.

1. Whether the First Appellate Court was right in reversing the Judgement of the Trial Court without upsetting the findings of the Trial Court with respect to the possession of 3rd Item of suit property?

2. Whether the First Appellate Court is right in accepting the plea of the defendants based on the Unregistered Sale Deed Ex.B1 for Rs.10,000/-?

3. Whether the First Appellate Court is right



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in arriving at a conclusion that the Government ought to have been made a party, ignoring the fact that the plaintiff sought for the relief admitting the predominant title of the Government?

7. I have heard Mr.V.Anand, counsel for the appellant and Mr.S.Senthilnathan, counsel for the respondents. I have also perused the pleadings, documents and also deposition recorded before the Trial Court and also considered the judgement of the Trial Court as well as the First Appellate Court.

8. After hearing the counsel elaborately, the substantial questions of law are to be recast, for the following reasons:

1. The First Appellate Court has found that the possession of the 3rd Item of the suit property was with the respondents and not the appellants. Therefore the first question of law does not survive for consideration.

2. Insofar as the third substantial question of law regarding the Government being made as a party, after perusing the judgement of the First Appellate Court, I do not find that the non-impleadment of the Government



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has been the reason for allowing the appeal in part. No doubt, the First Appellate Court has discussed the question of whether the Government ought to have been made a party or not. However, the conclusions arrived at by the First Appellate Court and allowing the appeal in part are not on the ground that the Government ought to have been made a party to the suit. Therefore this Question of Law is also one that needs no consideration

3. It is a case where both the plaintiff and defendants categorically admitted the title of the Government. The questions that arose for consideration in the suit were only with regard to possessory title. Therefore, the factum of physical possession assumes relevance and once a finding is rendered with regard to possession of the 3rd Item of the suit schedule property, the entire issue would stand resolved as far the present Second Appeal is concerned. Therefore, the following additional substantial question of law is framed to be answered along with the 2nd substantial question of law.

Accordingly, the substantial questions of law are reframed as hereunder;

*1. Whether the First Appellate Court is right
in accepting the plea of the defendants based on
the Unregistered Sale Deed Ex.B1 for Rs.10,000/-?*



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2. Whether the First Appellate Court was right in reversing the decree in so far as the 3rd Item of suit schedule property placing reliance on Exhibits B-1 to B-4”.

9. In so far as the 1st substantial question of law pertaining to an unregistered Sale Deed, I am of the view that no reliance can be placed on the said unregistered Sale Deed. Infact the First Appellate Court has held that since deficit stamp duty has been paid, the said Sale Deed can be looked into. Unfortunately, the law is settled on this point. “No amount of evidence or payment of stamp duty would render a sale deed under which a sale consideration is reflected to be Rs.10,000/-, when such sale deed being unregistered, is admissible in evidence”. Infact the counsel for the respondents would also fairly concede to this position. Therefore, the 1st substantial question of law is answered in favour of the appellants.

10. Coming to second substantial question of law, as already indicated herein above, both the plaintiff and the defendants categorically admitted that they are locking horns only in respect of the possessory right of a property



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belonging to the Government. That being so, the only issue that requires consideration is to see whether the plaintiff was in possession on the date of filing of the suit or as to whether it was the defendants, as contended by them. The Learned Counsel for the appellants would invite my attention to the written statement filed by the 1st defendant, where the 1st defendant, according to the Counsel for the appellant has admitted that the plaintiff was in possession of said Item No.3 of the Suit Schedule Property. He would also contend that the settled Legal Principle is that “possession follows title” and when the respondent’s title cannot be accepted as it is under an unregistered Sale Deed, possession in the hands of the respondents can never be legal or acceptable. He would further contend that the plaintiff never admitted having sold Item No.3 of the suit scheduled property to the 2nd defendant and the burden was on the respondents to establish the self-serving claims made in the written statement to the contra. According to the counsel for appellants, the Trial Court had rightly considered the pleadings as well as evidence adduced by the parties and decreed the suit. However, the First Appellate Court erroneously reversed the decree insofar as Item-3 of the suit schedule



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property alone was concerned on unsubstantiated grounds and reasons, which cannot stand the scrutiny of law. He would therefore pray for the Appeal being allowed and the decree of the Trial Court being restored.

11. The Counsel for the appellant would also place reliance on the Judgement of the Hon'ble Supreme Court in *Nair Service Society vs. K.C.Alexander* reported in *AIR 1968 SC 1165*, for the proposition that, “in suits relating to possessory rights, it was not necessary for impleading the original owner”. However, in view of the substantial questions of law being recast, I find no necessity to refer to this decision of the Hon' ble Supreme Court.

12. Per contra, Mr.S.Senthilnathan, counsel appearing for the respondents would submit that even though the respondents set up a plea of purchase of Item 3 of the suit schedule property under an Unregistered Sale Deed, he would rely on Exhibits B-2 to B-4 for the purposes of establishing the defence set up by the respondents, which would be sufficient according to



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him to dismiss the Second Appeal, confirming the judgement and decree of the First Appellate Court.

13. There is no dispute that the suit schedule properties are Government poramboke lands. The defence set up by the respondents pertained only to Item-3 and not in respect of Item Nos.1,2, and 4. The First Appellate Court discussed the exhibits filed on the side of the appellants in Ex.A-1 to A-9 as well as Ex.B-2 to B-4 and came to the conclusion that the respondents had established their lawful possession vide Ex.B-2 to B-4. Ex. B-2 is a 'B' Memo issued by the Government. The 'B' Memo recognizes the possession being in the hands of the person to whom it is issued/ served. When both the parties are in agreement with regard to the title of the Government to all the Items of the suit schedule properties, when the Government itself had issued a 'B' Memo to the respondent, it is not only a valid, but the best piece of evidence to hold that the paramount title holder had recognized possession of the subject lands being available in the hands of the respondents. Ex.B-2 is dated 20.09.1988. In furtherance of the said 'B'



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Memo, the 2nd defendant has paid the penalty under Ex.B-3 and B-4, which are dated 21.09.1988 and 18.01.1989.

14. The plaintiff, having approached the Court, that too seeking a declaration of his possessory title, has marked Ex.A-1 to A-9 which all pertain to Fasli years 1389 to 1396. Therefore, all these records pertain only to the years 1979 to 1986 and not thereafter. It is the specific case of the defendants that the 2nd defendant had purchased the 3rd Item of suit property only in the year 1987. The Appellant has not filed even a shred of evidence to establish the factum of his being in possession on the date of the filing of the suit. On the contrary, the defendants have filed Ex.B-2, which is a 'B' Memo served on the 2nd Defendant by the Government. A person who approaches the Court seeking a relief of declaration ought to lead credible evidence, oral as well as documentary, to establish the right and title to the property over which the relief is claimed. Here admittedly, the Plaintiff had miserably failed to establish his claim of being in possession of item-3 of the Suit Schedule Property. The defendants, though are not entitled to take shelter under the



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unregistered sale deed in favour of the 2nd defendant, are saved by the 'B' Memo in Ex.B-2, which only probablizes their case of having purchased the 3rd Item of the suit schedule property for valuable sale consideration from the plaintiff. Even if the said Sale Deed cannot be relied on, possession being with the respondents is confirmed by Ex. B2-4. In so far as these documents are concerned, the First Appellate Court has rightly appreciated the same and proceeded to reverse the findings of the Trial Court and modify the Judgement and Decree pertaining to the Item-3 of the Suit Scheduled Property alone. For all the above reasons, the 2nd Substantial Question of Law is answered against the appellants. In fine, the Second Appeal fails and accordingly dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

04.08.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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To

- 1.The Additional Sub Judge, Vriddhachalam
- 2.The District Munsiff cum Judicial Magisgrate
Thittakudi.



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P.B.BALAJI, J.,
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Pre-delivery Judgment in
S.A.No.1054 of 2010 and
M.P. No. 1 of 2010

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