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SA.Nos.377 & 378 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2023

PRONOUNCED ON : 21.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.Nos.377 & 378 of 2004

and

CMP.Nos.2642 of 2004, 4002 of 2023 & 112 of 2005

S.A.No.377 of 2004

Vengudusamy (Died)

2. Sivabhakiyam

3. Chitrakala

(A2 & A3 bring on record as LR's of deceased sole appellant)

... Appellants

- Vs -

1. S.Thangavel (Deceased)

2. S.Loganathan (Deceased)

3. S.Kanagaraj

4. S.Nagaraj (Died)

5. S.Ananthanarayanan

6. T.Manian

7. T.Saravanan

(R6 & R7 brought on record as LR's of the deceased R1

vide order dated 18.02.2016 made in CMP.Nos.1584 to 1586/2007)

8. Nirmala

(R8 brought on record as LR of the deceased R2

vide order dated 18.02.2016 made in CMP.Nos.1587 to 1589/2007)

R4-died-No surviving LR's recorded vide order dated 30.08.2022

... Respondents



SA.Nos.377 & 378 of 2004

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.42 of 2001 by the Sub Court, Udumalpet, dated 24.07.2003 modifying the judgment and decree passed in O.S.No.720 of 1992 by the District Munsif Court, Udumalpet dated 23.03.1999.

For Appellants : Mr.B.Kumarasamy

For Respondents : Mr.N.Thiagarajan for RR3, 5, 6 & 7
R4 – Died
R1 & R2 - died (steps taken)
R8- Not ready in notice

S.A.No.378 of 2004

Vengudusamy (Died)

2. Sivabhakiyam

3. Chitrakala

(A2 & A3 bring on record as LR's of deceased sole appellant)

... Appellants

- Vs -

1. S.Thangavel (Deceased)
2. S.Loganathan (Deceased)
3. S.Kanagaraj
4. S.Nagaraj (Died)
5. S.Ananthanarayanan
6. The District Collector,
Tamil Nadu Government,
Coimbatore.
7. The Tahsildar,
Katcherry Street,
Udumalpet,
Coimbatore.
8. T.Manian
9. T.Saravanan

(R8 & R9 brought on record as LR's of the deceased R1
vide order dated 18.02.2016 made in CMP.Nos.1590 to 1592/2007)



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10.Nirmala

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(R10 brought on record as LR of the deceased R2
vide order dated 18.02.2016 made in CMP.Nos.1593 to 1595/2007)
R4-died-No surviving LR's recorded vide order dated 30.08.2022

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.3 of 2002 by the Sub Court, Udumalpet, dated 24.07.2003 reversing the judgment and decree passed in O.S.No.750 of 1992 by the District Munsif Court, Udumalpet, dated 23.03.1999.

For Appellants : Mr.B.Kumarasamy

For Respondent : Mr.N.Thiagarajan for RR3, 5, 8 & 9
Mr.C.Sathish
Govt. Advocate for R6 & R7
RR1, 2 & 4-Died

COMMON JUDGMENT

Since both the Second Appeals are arising for the same property, this Court deems it appropriate to dispose of both the appeals by way of a common judgment.

2. The instant Second Appeals have been filed at the instance of the plaintiffs. It appears that the plaintiff Mr.Vengudusamy originally filed a suit for permanent injunction in O.S.No.720 of 1992 against the 7 private



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persons. Wherein the defendants put forth the contention that the Government is the necessary party. Hence, the plaintiff has filed another suit in O.S.No.750 of 1992 against the Government for the relief of injunction, and subsequently amended the prayer seeking declaration. Both the suits were decreed by the Trial Court on 23.03.1999. Against which, the defendants in O.S.No.720 of 1992 preferred two Appeals in A.S.No.42 of 2001 and A.S.No.3 of 2002, in which the First Appellate Court set aside the Trial Court's judgment, and the suit was ultimately dismissed. Aggrieved with the same, the plaintiff is before this Court by way of these Second Appeals.

3. For ready reference, the parties will be referred to according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant Second Appeals are as follows:-

4. a) The plaintiff is the absolute owner of the suit property by virtue of two Sale Deeds dated 11.08.1986 and 04.12.1991. According to the plaintiff, the suit properties are vacant site, and except the plaintiff, no one has got right over the same. While so, the defendants attempted to interfere



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with the suit property by contending that it is a public passage. Hence, the plaintiff came forward with the suit for the relief of permanent injunction in O.S.No.720 of 1992.

b) The said suit was resisted by the defendants by contending that the suit property is the public passage and the plaintiff has no right title and ownership over the same. It was also further contended that the Government is a necessary party to the suit.

c) After filing of the above written statement, the plaintiff filed another suit in O.S.No.750 of 1992 originally for bare injunction and, subsequently the prayer was amended for the relief of declaration and injunction against the official defendants qua the Government. Wherein, the plaintiff sought for the relief of declaration in respect of the suit property.

d) The said suit was resisted by the official defendants that the plaintiff has been in encroachment of the suit property, and a notice have been issued for removal of encroachment. Hence, the defendants in both the suits prayed to dismiss the same.



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Evidence and Documents:-

5. Before the Trial Court, the plaintiff examined 4 witnesses as PW1 to PW4, and marked as many as 10 documents as Exs.A1 to A10. On behalf of the defendants, 6 documents have been marked as Exs.B1 to B6 and 2 witnesses have been examined as DW1 and DW2. Before the Trial Court, Court documents were also marked.

Findings of the Court below:-

6. The Trial Court, after having gone into the oral and documentary evidence, decreed the suit as prayed for. Aggrieved with the said judgment, when the defendants preferred appeals, the First Appellate Court set aside the judgment of the Trial Court by allowing the appeals and thereby, dismissed the suits. Against the said finding, the plaintiff is before this Court by way of these Second Appeals.

Substantial Question of Law:-

7. At the time of admission on 12.03.2004, this Court has formulated a common substantial question of law, which is as follows:-

“Having regard to the recital regarding the western



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boundary in Ex.A4 and absence of any legal evidence produced by the defendants in support of their defence, has not the Lower Appellate Court committed an error of law in non suiting the plaintiff in both the suits ignoring the material evidence available on record?”

Submission of either side counsel:-

8. The learned counsel for the plaintiff/appellant in both the Second Appeals would vehemently contend that by virtue of Sale Deeds dated 11.08.1986 and 04.12.1991, they are the absolute owner of the property and that they have been in actual physical possession and enjoyment of the same. It was also contended by the learned counsel for the plaintiff/appellants that though it is the case of the defendants that the suit property is a Poromboke passage, they have not submitted any documents before the Court to prove their case. On the other hand, it was the contention of the learned counsel for the plaintiff that by producing their Sale Deed, they have demonstrated their title over the suit property. Hence, contended that they are entitled for a decree as prayed for. In view of the same, the learned counsel for the plaintiff prayed to allow the Second Appeals.



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9. Per contra, the learned counsel for the respondents in both the appeals would contend that the suit property is a public passage and that the encroachment of the plaintiff could be evidently proved through the Revenue records and the sketch submitted by the defendants, and that the finding of fact recorded by both the Courts below that the defendants in occupation of an extent more than what is mentioned in his Sale Deed. Therefore, it is the submission of the learned counsel for the defendants that the plaintiff has not approached the Court with clean hands, and that he is not entitled for any reliefs. Hence, prayed to dismiss the Second Appeals.

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

Analysis of the submissions:-

11. In order to decide the substantial question of law, this Court would like to rely upon Exs.A1 and A3, which is the parental deeds in respect of the suit property. The suit property is a passage between Madurai Veeran Temple and the plaintiff's property. The Trial Court has granted decree with a finding that the defendants have not submitted any document so as to prove that the that the suit property is the Government Poromboke passage.



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12. It is settled principles of law that, when the plaintiff approaches the Court seeking for the relief, the burden is upon him to prove the case and he cannot rely upon the weakness of the defendants' case. According to the plaint, the suit property is the passage and that the passage is available between the suit property comprised in S.F.No.20/A1A. According to Exs.A1 and A3-Sale Deeds, the plaintiff is entitled for an extent of 4131 sq.ft+ 931 ½ sq. ft. This Court has perused Exs.B2 and B3, which are the documents submitted by DW2. Ex.B2 is the notice issued to the defendants to remove encroachment and Ex.B3 is the plan showing the alleged encroachment. On perusal of Ex.B3, though the plaintiff is entitled for the extent of 5062 ½ sq. ft, he was in possession and enjoyment of 6300 sq.ft.

13. As a matter of fact, Exs.B2 & B3 have been marked through DW2. While perusing the cross examination of DW2, there is no denial as to the enjoyment of the total extent as referred to in Ex.B3-plan. Though the Trial Court accepted the evidence of DW2, still granted decree on the ground that the defendants did not submit any record so as to prove that the excess portion is the Government Poromboke land.

14. But the First Appellate Court, while re-appreciating the evidence, has arrived at a conclusion that when the plaintiff has come up with a



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specific case, that too with specific boundary and with specific measurement, he cannot be entitled for a decree more than the extent mentioned in his title deeds [Exs.A1 and A3]. The First Appellate Court, in its judgment has elaborately discussed all these aspects and has found that the finding recorded by the Trial Court, shifting the burden upon the defendants, without explaining as to how he was in excess occupation, is contrary to the settled legal principles.

15. Therefore, when the plaintiff is only having a right over lesser extent, since because the defendant has not proved the nature of land or nature of classification of the property in question, that does not mean that the plaintiff can have right more than the property mentioned in his Sale Deed. Therefore, this Court is of the firm view that, the finding of fact recorded by the First Appellate Court that the plaintiff is in occupation of more than the property mentioned in his title deeds [Exs.A1 and A3] is vindicated through Ex.B3-plan, and such plan has not at all been disputed by the plaintiff, while cross examining the DW2. Therefore, this Court is of the firm view that the finding of fact recorded by the First Appellate Court is based on materials, and this Court could not find any perversity over the same.



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16. From the submissions made by the learned counsel for the appellants, this Court could not find any ground to deviate from the said findings recorded by the First Appellate Court. In view of the above discussion, the substantial question of law is answered in favour of the respondents.

17. In the result, both the Second Appeals are dismissed by confirming the judgments of the First Appellate Court. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

21.12.2023

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Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Sub Court,
Udumalpet.
2. The District Munsif Court,
Udumalpet.



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C.KUMARAPPAN, J

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