



S.A.No.1579 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2023
Pronounced on	22.12.2023

CORAM:

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

S.A.No.1579 of 2010

and

M.P.No.1 of 2010

V. Venkatasamy Reddy

... Appellant

-Vs-

- 1.R.Sampath
2. Venkata Reddy
3. Seshamani
4. Sasikala
5. Hosallaiah
6. Esharvathi
- 7.M.S.Ramasamy
- 8.Jothiammal
9. Steepen
- 10.V.Parvathamma
11. G.Sweatha (Major)
12. G.Sandeep (Major)

(R11 and R12 declared as Majors vide order of Court dated 12.02.2021 made in C.M.P.No. 1471 of 2021 by TRNJ

... Respondents



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Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Court of the Subordinate Court, Hosur, in A.S.No. 42 of 2008, dated 26.07.2010 in confirming the judgment and decree of the Court of the District Munsif Court, Hosur in O.S.No. 57 of 99 dated 27.08.2008.

For Appellant : Mrs. V.Srimathi

For Respondents : Mr. J. Ramakrishnan
(for R3, R4, R8 and R9)

R1, R2, R5 to R7 were set exparte

R10 - died

JUDGMENT

The instant Second appeal has been filed at the instances of first Plaintiff.

2. The parties herein will be referred according to their litigative status before the Trial Court.

3. The case of the Plaintiff in as follows:-

(i) The land bearing Paimash No. 23 of Hanumapalli Agraram in Hosur Taluk is having an extent of 6.72 acres. It originally belong to one



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Mr.Ramaiah, Mr. Gowramma and Mr. Nanjamma. They sold it to one Mr.Pedda Munisamy @Thimmareddy vide sale deed dated 24.03.1962. The said Mr.Pedda Munisamy @Thimmareddy died in 1977. He had 6 sons, and the second defendant is one of the son of the said Mr.Pedda Munisamy @Thimmareddy

(ii) The first and second plaintiffs are the children of second defendant Mr. Venkata Reddy. The second defendant executed a nominal sale deed in favour of one Sunupurallu Thimmaiah on 02.01.1973. Though, it was only a mortgage deed, but by taking advantage of the illiteracy of the second defendant, the said Mr.Sunupurallu Thimmaiah managed to get sale deed under the pretext of getting mortgage deed. In turn, the said Sunupurallu Thimmaiah sold the property to one Biddiah @ Muniyappa on 22.05.1974. Though there was a sale by the second defendant, no possession was handed over to the purchaser, and all along the possession of the property vested with the plaintiffs as well as the second defendant. The said Mr.Biddiah @ Muniyappa again sold the property in favour of the first defendant on 29.10.1981. Even, by virtue of this sale, no possession was handed over to the first defendant.



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(iii) The S.F.No.24, Zuzuwadi Taraf consists of 60 cents. Out of which, by virtue of the partition dated 27.03.1997, the Second defendant was allotted 18 cents, the first plaintiff was allotted 24 cents, and the second plaintiff was allotted 18 cents. The first, second plaintiff and second defendant were in joint possession of the suit properties. During the trial, the second plaintiff died and his legal heirs were brought on record. Since the first defendant along with third to ninth defendants attempted to trespass into the suit property, they prayed for declaration and permanent injunction.

4. The said suit was resisted by third, fourth and eighth defendants by contending that the suit property was in possession and in enjoyment of these defendants and that the plaintiffs have no right, title or ownership over the same. According to them, the second defendant executed a sale deed dated 02.01.1973. If really, there was any misrepresentation or forgery, the second defendant would have filed a suit to set aside the document. Therefore, they submitted that by virtue of the sale deed dated 29.10.1981, the first defendant was in possession and in enjoyment of the suit property, and prior to him, his predecessor was in possession and



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enjoyment based upon their respective sale deeds. Hence, they prayed to dismiss the suit.

Evidence, Documents and finding of the Court below:-

5. Before the Trial Court, the first plaintiff examined himself as PW1, and no documents were marked on their behalf. On the side of defendant, two witness were examined as DW1 and DW2, and 10 documents were marked as Ex. B1 to B10. The Trial Court after, having gone through the oral and documentary evidence, ultimately dismissed the suit by judgment dated 27.08.2008.

6. Aggrieved by that, the plaintiffs preferred an appeal before the First Appellate Court. In the appeal, the plaintiffs appeared to have not challenged the findings recorded by the Trial Court. However, they prayed to remit the matter back to the Trial Court with the direction to consider the application filed by them under Order XXIII Rule 1 of the Civil Procedure Code for withdrawal of the suit, as the suit property has already been sold by the plaintiffs to some third parties. However, the First appellant Court declined the prayer made by the plaintiffs and upon re-appreciation of evidence and upon determining the points for



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consideration, confirmed the findings recorded by the Trial Court. Aggrieved the same, the first Plaintiff is before this Court by way of this second appeal.

Substantial question of law:-

7. On 22.11.2022, this Court formulated the following substantial questions of law:-

1. Whether the Courts below were justified in dismissing the suit, when the appellant had filed an application for withdrawal of the suit based on the pendency of the proceeding at the instance of the purchasers and pending on the file of the same Court?
2. Whether the Courts below were right in overlooking the fact the properties are ancestral in nature and the father of the appellant has no right to sell the entirety of the property?

Submissions of either side Counsel:-

8. The learned counsel appearing on behalf of the appellant would vehemently contend that, the suit property has already been sold by the plaintiffs to various third parties are that the plaintiffs themselves filed an



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application under Order XXIII Rule 1 of the Civil Procedure Code, and that the Trial Court ought to have allowed the said application, since the plaintiffs have got unfettered right to withdraw the suit at any stage of the proceedings. It was also the contention of the appellant that the Trial Court had not considered the evidence of PW1 in detail as to who is in possession of the suit property and that the documents relied by the defendants cannot be said to be documents so as to prove the title of the defendants. Hence, he prayed to allow the appeal.

9. The learned Counsel for the appellant relied upon the following judgment of the Hon'ble Supreme Court held in:-

(i) in the case of **Anil Kumar Singh vs. Vijay Pal Singh & ors.**
(Civil Appeal No. 20007 of 2017 dated 30.11.2017.

(ii) in the case of **M/s. Sree Surya Developers and Promoters vs. N.Sailesh Prasad and Ors.** (Civil Appeal No. 439 of 2022 dated 09.02.2022.

(iii) in the case of **R.Rathinavel Chettiar Vs.V.Sivaraman reported in (1999) 4 SCC 89**, he also relied various High Court Judgments.



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(iv) the judgment of the High Court of *Allahabad* in the case of *Kedar Nath Vs. Chandra Kiran and others.* (Civil Misc.Appln.No.(nil) of 1961 in Second Appeal No. 1757 of 1960 dated 30.08.1961) and

(v) the judgment of this Court in the case of *Dharmaraja Vs. Pethu Raja* (Second Appeal No. 553 of 1921 dated 16.03.1923)

10. Per Contra, the learned counsel for the contesting defendants would vehemently contend that, after full fledged trial and after hearing the arguments of both sides, and after granting few adjournments for pronouncing Judgments, when the suit was posted for judgment on 27.08.2008, at the fag end of the proceeding, the plaintiff woke up from the slumber and filed an I.A., for withdrawal of suit, and such kind of procedure adopted by the plaintiffs is nothing but abuse of process of law. It was further contended that the Plaintiffs having filed the suit, participating in the trial and having allowed the suit proceedings till the stage of Passing Judgment, their belated claim for withdrawal of suit, had been rightly declined by both the Courts. Hence the first plaintiff's claim in this regard cannot be entertained in the eye of law. Hence, prayed to dismiss this Second Appeal.



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11. The learned counsel for the contesting respondents/defendants relied upon the following Judgments of the Hon'ble Supreme Court of India:-

(i) in the case of ***Suhrid Singh Alias Sardool Singh Vs.Randhir Singh reported in (2010) 12 SCC 11.***

(ii) in the case of State of ***Madhya Pradesh Vs.Nomi Singh reported in (2015) 14 SCC 450.***

(iii) in the case of ***Union of India Vs. Vasavi Cooperative Housing Society Limited reported in (2014) 2 SCC 269.***

Analysis of the submissions:-

12. In order to decide the substantial questions of law, we must see as to whether the first plaintiff/appellant has proved his case or not. According to the him, the property was originally belonged to the second defendant Mr.Venkata Reddy, who is the father of the first plaintiff. However, the contesting defendant's predecessor in title, by taking advantage of the illiteracy of the second defendant, fraudulently obtained



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the sale deed under the pretext of getting a mortgage deed. It was further contended by the appellant/first plaintiff that the second defendant had been in possession and enjoyment of the suit property and that the second defendant and the plaintiffs partitioned the suit property in S.F.No. 24 and out of such partition, 42 cents were allotted to first and second plaintiffs.

13. From the above narration, it is incumbent upon the plaintiffs to prove that the suit property in S.F.No. 24 belonged to the second defendant and that he retained possession and that he had an intention only to execute the mortgaged deed and not the sale deed, and that, subsequently, there was a partition among first and second plaintiffs and the second defendant. If this court looks at the judgment of the Trial Court, it is clear that the plaintiffs did not submit any document to prove their title. On the other hand, the defendants submitted their sale deed. Therefore, on the face of it, this court has no hesitation to hold that the plaintiffs have miserably failed to prove their case. Hence, there is every justification for dismissal of the suit.

14. Such finding could be further vindicated from the request made



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by the plaintiffs for withdrawal of the suit. The ground urged for withdrawal is that they sold the suit property to the third parties. Hence, unless the plaintiffs prove their title over the suit property the alleged sale of such property to third party will become pales into insignificance. As a matter of fact, the only contention put forth before this Court is not on the basis of merits, but, the learned counsel for the appellant would pray this Court for remand of this matter on the ground that the plaintiffs had no right, title or ownership over the suit property as they have already sold the suit property to some third parties.

15. But, the learned Counsel appearing for the contesting respondents/defendants would submit that even to prove the alleged sale to third parties, the appellant has not submitted any document. According to the defendants, only to wriggle out of the findings recorded by the Trial Court in a suit filed during 1999, the plaintiffs had taken such a novel plea during 2008. Therefore, this Court can safely conclude that, on the face of it, the plaintiffs had not established as to the alleged sale of the suit property to the third parties. Further from the perusal of the records, it is seen that the suit was filed in the year 1999 and it was disposed



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during 2008. Only when the matter was posed for judgment, the interlocutory application has been filed before the Trial Court for withdrawal of the suit.

16. The judgment of the Apex Court which is relied upon by the appellant in the case of **Anilkumar Singh (cited supra)** is not applicable to the facts of this case, as the said case pertains to withdrawal of the suit in pursuance of a compromise. Similarly, the judgment of the Apex Court relied upon by the appellant in the case of **M/s. Sree Surya Developers and Promoters (cited supra)** is also not relevant to the facts of this case as the same pertains to Order XXIII Rule 3A of the Civil Procedure Code. But, here we are only concerned with a withdrawal under Order XXIII Rule 1 of the Civil Procedure Code.

17. However, in all fairness, the learned counsel for the appellant relied upon the Judgment of the High Court of *Allahabad* in the case of **Kedar Nath (cited supra)** wherein it has been held as follows:-

“2. Having considered the matter, I am of opinion that O.23, R.1, Sub-rule (1) does not give an absolute right to the plaintiffs appellants to withdraw the suit at this stage. The matter lies



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within the discretion of the Court.

3. The case has now reached the stage of second appeal, and unless the plaintiffs are able to make out some good ground for giving them permission to withdraw, the said permission should not be accorded. No such ground is given by the plaintiffs in their application. In fact the ground put forward on their behalf before me is that the findings given by the lower Court against the plaintiffs-appellants in the present case may operate as res judicata in a second suit filed by them. I am of opinion that this is the very ground for not granting them the permission asked for. I accordingly dismissed this application.”

As per the above Judgment, the Division Bench of this court has held that the appeal cannot be allowed only to withdraw the suit against the appellant as it would prejudice the interest of the appellant.

18. The learned counsel for the appellant also relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***R.Rathinavel Chettiar*** (cited supra) wherein it has been held as follows:-



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“11. Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant.

12. What is essential is that the matter must have been finally decided so that it becomes conclusive as between the parties to the suit in respect of the subject-matter of the suit with reference to which relief is sought. It is at this stage that the rights of the parties are crystallised and unless the decree is reversed, recalled, modified or set aside, the parties cannot be divested of their rights under the decree. Now, the decree can be recalled, reversed or set aside either by the Court which had passed it as in review, or by the appellate or revisional Court. Since withdrawal of suit at the appellant stage, if allowed, would have the effect of destroying or nullifying the decree affecting thereby rights of the parties which came to be vested under the decree, it cannot be allowed as a matter of course but has to be allowed rarely only when a strong case is made out. It is for this reason that the proceedings either in appeal or in revision have to be allowed to have full trial on merits.



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22. In view of the above discussion, it comes out that where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would be affect or prejudice anybody's vested rights. The impugned Judgement of the High Court in which a contrary view has been expressed cannot be sustained.”

(Emphasis Supplied by this Court)

19. As per the judgment of the Hon'ble Supreme Court in the case of **R.Rathinavel Chettiar (cited supra)**, if withdrawal of suit is allowed at the appellate stage by nullifying the decree of the Trial Court, then the same would affect the valuable rights of the parties. In the case on hand, though the plaintiffs stated that they are the owners of the suit property, they had not submitted any proof before the Trial Court. When they stated that they sold the suit property to the third parties, even for the same they did not think fit to submit the relevant document. Therefore, in



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view of the above precedence, if the plaintiffs are permitted to withdraw the suit after a lapse of 2 decades that too after having suffered a decree on merits, it will become egregious and would ennure to the benefit of a person who has no semblance of materials to prove his case.

20. Therefore, this court is of the indubitable opinion that the findings of fact recorded by the Trial court as well as the First Appellate Court are based on the materials available before Court and this Court does not find any perversity over the findings of both the Courts below. In view of the above discussions, the substantial questions of law are answered against the appellant.

21. In the result, the Second Appeal is dismissed. Connected Miscellaneous Petition is also dismissed. No cost.

22.12.2023.

Internet : Yes

Index : Yes

Speaking order/Non-speaking order

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To

1. The Subordinate Court,
Hosur.
2. The District Munsif Court,
Hosur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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C.KUMARAPPAN,J.

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Pre-Delivery order

**S.A.No.1579 of 2010
and
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Order pronounced on 22.12.2023