



S.A.No.1002 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1002 of 2005

1.Rasa Gounder (Died)
2.Paramanandam
3.Rangasamy
4.Saraswathi
5.Pavaiammal ...Appellants
(Appellants 4 and 5 are brought
on record as LR's of the deceased 1st appellant
vide order of Court dated 20.07.2015
made in M.P.Nos.2 and 3 of 2015 in
S.A.No.1002 of 2005.)

Vs

1.N.Thangamuthu (Died)
2.Kuppan (Died)
3.Kari @ Maran
4.Chenni (Died)
5.Chellamuthu
6.Mothukkarar @ Rasan (Died)
7.L.Lakshmi
8.T.Pushpavathi
9.T.Sureshkumar
10.Sumathi
11.Lakshmi



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- 12.Valarmathi
- 13.Senthilkumar
- 14.Nathiya
- 15.Senthilkumar
- 16.Suresh
- 17.Devendran
- 18.Shanmugasundaram
- 19.Murugan

... Respondents

[Respondents 7 to 10 brought on record as LRs of the deceased R1 viz., Thangamuthu vide Order of Court dated 26.09.2019 made in CMP No.15423, 15426 and 15428 of 2019 in S.A.No.1002 of 2005 (PRMJ)]

[Respondents 11 to 14 brought on record as LRs of the deceased R2 viz., Kuppan and Respondents 15 and 16 brought on record as LRs of the deceased R4 viz., Chenni and Respondents 17 to 19 brought on record as LRs of the deceased R6 viz., Koththukkarar @ Rasan vide Order of Court dated 04.02.2020 made in C.M.P.Nos.257, 261, 262, 264, 266, 267, 268 269 and 270 of 2020 in S.A.No.1002 of 2005(GKIJ)]

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree passed by the Lower Appellate Court in A.S.No.35 of 2004 on the file of Principal Sub-Court, Erode dated 04.10.2004 reversing the Judgment and Decree of the Trial Court in O.S.No.13 of 1998 on the file of District Munsif-cum-Judicial Magistrate, Perundurai dated 04.02.2004.



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For Appellants : Mr.S.Parthasarathy, Senior Counsel
for M/s.P.P.Shanmugasundaram

For Respondents : R1, R2, R3, R4 and R6 – Died
Steps Taken
Mr.Akash.D
for Mr.N.Manokaran [R3 and R5]
Mr.P.K.Hemnath Babu
for Mr.V.Balamurugan [R7 to R10]
R11 to R19 – No Appearance

JUDGMENT

The appellants 1 to 3 are the defendants 1 to 3 in the suit. On the death of the 1st defendant, the legal heirs were impleaded as appellants 4 and 5. The 1st respondent herein was originally the plaintiff.

2. The brief facts which gives rise to the instant second appeal are as follows:

Originally the suit property in S.F.No.177/A to an extent of 2 acre 10 cents belongs to one Periya Palani Gounder by virtue of sale deed dated 3/11



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10.12.1930. From Periya Palani Gounder, one Ramasami Pillai has purchased the same. In turn, the plaintiff Thangamuthu purchased the suit property by virtue of sale deed dated 10.11.1997 under Ex.A1. The further submission of the plaintiff is that, the defendants without having any right over the property has interfered with the same and hence prayed to decree the suit.

3. The suit was resisted by the defendants by relying upon the sale deed, dated 22.02.1911, under Ex.B1. According to the defendants an extent of 12 acre 59 cents consists in S.F.No.177, and that the plaintiff without having any anterior title, by misusing their position in the village as Karnam has created Ex.A2-sale deed dated 10.12.1930 and altered the revenue records without having any right over the property. Therefore, the defendants prayed to dismiss the suit.

Evidence and documents:-

4. On the side of the plaintiff, plaintiff himself was examined as PW1



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and another witness was examined as PW2 and Exs.A1 to A19 were marked. On the side of the defendants, 2nd defendant himself was examined as DW1 and Ex.B1 was marked. The Commissioner's Report and Plans (filed in O.S.No.25 of 1998) were marked as Exs.C1 to C3.

Findings of both the Court below:-

5. The Trial Court after considering the submissions made on either side has dismissed the suit by believing the case put-forth by the defendants. However, in the plaintiff's appeal, the suit was decreed by relying upon the admissions made by the defendants to the effect that since 1930 they did not make any attempt to change their names in the revenue record, inspite of having knowledge that the revenue record stands in the name of the plaintiff. Aggrieved by the same, the defendants are before this Court.

Substantial Question of law:

6. The second appeal was admitted on the following substantial questions of law:



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"1. Has not the Lower Appellate Court committed an error of law in decreeing the suit in view of Ex.B1 which proves the title of the appellant for S.No.177 whereas the plaintiff has not proved his title and his vendors and hence in view of the settled principle that injunction follows title the suit ought to have been dismissed.

2. Has not the Lower Appellate Court committed an error in not holding that Re-survey proceedings are not binding on the appellants without serving notice on the appellants and hence the same cannot be re-laid upon."

Submissions of either side counsel:-

7. The learned Senior Counsel Mr.S.Parthasarathy appearing on behalf of M/s.P.P.Shanmugasundaram for the appellants would contend that, though the plaintiff set up title by virtue of sale deed dated 10.12.1930, the said sale deed is only sham and nominal document, as there was no anterior title to the above said sale deed. The learned Senior Counsel would further



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submit that the defendant could trace title since 22.02.1911, which is prior in point of time to the plaintiff's sale deed. Therefore, the learned Senior Counsel would contend that the case of the defendant is probable, as the plaintiff's predecessor in title having misused their position and has fabricated sale deed and revenue records. Hence, prayed to allow the second appeal.

8. Per contra, the learned counsel for the respondents would invite the attention of this Court about the admission made by DW1 and contend that, by the conduct of the appellant and through the revenue records, the title of the respondent can be established and prayed to dismiss the second appeal.

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

10. The 2nd defendant in the suit was examined as DW1. He is none other than the son of the 1st defendant. He categorically admitted that he knew about the fact, that the revenue records have been stands in the name



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of the plaintiff for a quite long time and also he aware about certain land acquisition proceedings and settlement of compensation amount to the plaintiff's predecessor in title. He further submitted that inspite of having knowledge, he did not object or take any action to change the revenue records. The First Appellate Court considered the above conduct of the defendant and disbelieved the case of the defendant and decreed the suit. Even while perusing the documents submitted by the plaintiff, he has submitted the documents since 1930 to till date. Further, the defendants rest their contention upon Ex.B1-sale deed, which is only a certified copy of the sale deed, and not the original sale deed.

11. Therefore, in view of the above discussion, this Court is of the view that the findings recorded by the First Appellate Court is based on documents and merit. To deviate from the said findings, there are no materials available before this Court. Therefore, the substantial question of law is liable to be answered in favour of the respondents/plaintiffs.



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12. In the result, this Second Appeal is dismissed and the Judgement and Decree passed by the Lower Appellate Court in A.S.No.35 of 2004 on the file of Principal Sub-Court, Erode dated 04.10.2004 reversing the Judgment and Decree of the Trial Court in O.S.No.13 of 1998 on the file of District Munsif-cum-Judicial Magistrate, Perundurai dated 04.02.2004 is hereby confirmed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssn

To

1. The Principal Sub-Court,
Erode.
2. The District Munsif-cum-Judicial Magistrate,
Perundurai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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