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S.A.No.748 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.748 of 2023
and
C.M.P.No.23777 of 2023

1. A.Palanisamy
2. A.Irusa Gounder
Appellants

...

Vs.

1. Samiappan
2. Subramani
3. The District Registrar,
Salem Town, Salem District.
4. The Sub Registrar,
Veerapandi Sub Registrar's Office,
Veerapandi, Salem Taluk and District.
5. Perumayee
6. Perumayee
7. Palaniammal
8. Kamala

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 19.11.2019 in A.S.No.30 of 2019 passed by the Learned I Additional Subordinate Judge, Salem confirming the judgment and decree dated 07.12.2018 in O.S.No.529



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of 2009 passed by the Learned II Additional District Munsif, Salem.

For appellants : Mr.R.Marudhachalamurthy

For respondents : No appearance

JUDGMENT

The plaintiffs, who had concurrently lost in both the Courts below, have filed this second appeal.

FACTS OF THE CASE:

2. The plaintiffs have filed the suit for bare injunction contending that the suit properties are their properties. The plaintiffs have divided their ancestral properties amongst themselves and their mother and sisters under a registered partition deed dated 17.08.2006, in and by which, the suit properties are under their joint possession.

2.1. The suit properties and other properties are their ancestral joint properties which have been purchased under the registered sale deeds dated 27.12.1955 and 16.11.1955 and vide a registered partition



deed dated 10.12.1981 entered into between the plaintiff's paternal grandfather and the plaintiff's deceased brother's son, Sengoda Gounder. The plaintiffs would submit that they are entitled to that share alone in the suit schedule properties.

2.2. It is the case of the plaintiffs that the defendants, who are stranger to these properties, are attempting to interfere with their peaceful possession and enjoyment of the properties. The defendants are also attempting to create a sham and nominal deeds in respect of the suit properties entitled to the third parties and therefore, the plaintiffs had come forward with this suit, particularly, on the ground that on 10.06.2019, the defendants had attempted to trespass into the suit properties.

2.3. The defendants 1 and 2 had filed a written statement denying the allegations contained in the plaint. It is their categorical case that the properties belong to the first defendant and the plaintiffs



have no right or title over the suit property. That apart, the plaintiffs had not filed any document to show their possession. The allegation, that on 10.09.2018, the defendants had attempted to trespass into the suit properties is stoutly denied by them. The first defendant contended that the suit properties stand in the name of the first defendant by virtue of a sale deed dated 05.02.1963.

2.4. An additional written statement was filed contending that though a serious doubt about the plaintiffs' title to the suit property has been raised, no application has been filed for amending the suit, as one for declaration. They would further contend that the description of the properties have not been provided correctly. The revenue record did not correlate to the suit properties. The first defendant would contend that he is an absolute owner of the properties by virtue of the sale deed dated 05.02.1963.

2.5. The defendants would further submit that the partition



deed entered into between the plaintiffs are not binding on the defendants.

TRIAL COURT:

3. The Trial Court had framed the following issues:

(i) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

(ii) To what relief the plaintiffs are entitled?

4. Before the Trial Court, the plaintiffs had examined three witnesses and marked Exs.A1 to A9. On the side of the defendants, the defendant had examined three witnesses and marked Exs.B1 to B10.

5. On analysing the evidence, the Trial Court had come to the conclusion that the suit is not maintainable and the plaintiffs had



failed to seek the relief of declaration, particularly, when there has been a serious denial of the same.

LOWER APPELLATE COURT:

6. Aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in A.S.No.30 of 2019 on the file of the learned I Additional Subordinate Court, Salem. The learned Judge had also, taking into consideration the evidence on record, dismissed the suit stating that the plaintiffs had failed to establish their possession and enjoyment of the suit properties and also on account of the fact that the plaintiffs had not sought an appropriate relief.

7. Aggrieved by this concurrent judgment and decree, the plaintiffs are before this Court.

8. Heard the learned counsel for the appellants.



DISCUSSION:

9. As rightly pointed out by both the Courts below, the plaintiffs who had filed the suit for permanent injunction, had failed to establish their possession. That apart, the defendants had set up the title to the suit properties, despite which, the plaintiffs had not sought amendment of the prayer in the suit as one for declaration.

10. The plaintiffs has only produced Ex.A1 to show their right and title to the suit schedule properties. The fact that the plaintiffs are unaware about the sub-divisions that have been effected in Survey No.76/4A and 76/4B is the clinching proof that they are not in possession of the properties. That apart, P.W.1 would admit to these sub-divisions and issue of patta, despite which, the plaintiff had not chosen to approach the authorities for proper demarcation of the sub-divisions.

11. The properties being agricultural lands, the plaintiffs



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should have produced the adangal receipts, *etc*, to show their possession. The plaintiffs had themselves admitted to the fact that the revenue records are standing in the name of the defendants.

12. Therefore, I see no reason to disagree with regard to the findings of the Courts below that the plaintiffs had failed to prove their *prima facie* possession which has disentitled them to a decree.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

31.10.2023

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

To

1. The I Additional Subordinate Judge,
Salem.
2. The II Additional District Munsif,
Salem.
3. The Section Officer, V.R. Section, High Court, Madras.

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P.T.ASHA, J.,

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