



S.A.No.1137 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1137 of 2011
and C.M.P.No.5928 of 2023
and M.P.No.1 of 2011

1.Venkata Reddy
2.Manjunatha Reddy
3.Venkatasamy Reddy

...Appellants

Vs.

1.Thimma Reddy
2.Ramasamy Reddy

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 11.08.2010 in A.S.No.24 of 2008 of the learned Subordinate Judge of Hosur, confirming the judgment and decree dated 26.03.2008 in O.S.No.354 of 2006 of the learned District Munsif of Hosur.

For Appellants : Mr. R.Bharath Kumar

For Respondents : Mrs. R.Abirami
for Ms.V.Srimathi



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J U D G M E N T

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The appellants herein are the defendants, and the respondents are the plaintiffs before the Trial Court. The plaintiffs filed the suit for the relief of declaration and permanent injunction.

2. For the sake of convenience, the parties will be referred according to their litigative status as before the Trial Court.

The brief facts which give rise to this Second Appeal are as follows:

3. The suit property is a landed property of an extent of 30 cents situated in S.No. 25/14 of Santhapuram Agraharam Village. According to the plaintiffs, the suit property originally belonged to one Mr.Veera Reddy and one Mr.Gulla Reddy, and by virtue of the Partition Deed dated 15.07.1972, the suit schedule property devolved upon one Mr.Chinna Thimma Reddy, who was the son of the said Mr.Veera Reddy. The said Mr.Chinna Thimma Reddy had three legal heirs viz., (i) Mr.Gulla Reddy, (ii) one Mr.Pilla Reddy and (iii) one Mr.Shankar Reddy. They orally partitioned the suit schedule property, which was acquired by the said Mr.Chinna Thimma Reddy vide Partition Deed dated 15.07.1972 and in the oral partition, which took place in 1982, the suit property fell



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to the share of the said Mr.Gulla Reddy, S/o. the said Chinna Thimma Reddy. The plaintiffs purchased the suit property from one of the legal heirs of the said Mr.Gulla Reddy, S/o. the said Chinna Thimma Reddy, viz., one Ms.Kavitha, vide sale deed dated 12.06.2006. Since, the defendants interfered in the possession of the plaintiffs, they filed the suit for the relief of declaration and permanent injunction.

4. However, the said suit was resisted by the defendants by disputing the title of the plaintiffs as well as their predecessors. The defendants pleaded that the suit property was in possession of defendants 1 and 2 for more than 50 years, and the defendant 3 was in possession of the suit property on the basis of the sale deed dated 19.05.2006.

5. The defendants also filed C.M.P. No.5928 of 2023 to receive the following additional documents under Order XLI Rule 27 of the Civil Procedure Code:

<i>S.No</i>	<i>Date</i>	<i>Description of document</i>
1	25.07.1956	Sale Deed executed by A.Krishnamoorthy in favour of Thimmarayareddy registered as Document No.2216/1956 along with translated copy.



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2	13.12.1969	Order passed by Settlement Tahsildar vide S.R.No.105/Act30/03/Hosur Tk, Santhapuram Vge., along with clean copy.
3	31.07.1971	Proceedings of the Settlement Tahsildar vide R.C.(F) 9553/2870.
4	28.07.1972	Extract of Village “A” Register.
5	061115	SLR – Santhapuram Agraharam.

6. It is the case of the defendants that for deciding this Second Appeal, the additional documents would be very much relevant. Further, it is submitted by the defendants that through the documents, which they have already filed, it could very well establish that the first and second defendants are the owners of the suit property. Hence, they prayed to dismiss the suit.

Evidence, Documents and Finding of the Courts below:

7. Before the Trial Court, on behalf of the plaintiffs, the second plaintiff himself was examined as P.W.1 and five more witnesses *viz.*, Mr.Gulla Reddy, Mr.Niasulla, Mr.Narayana Reddy, Mr.Niasulla and Mr.Chennappa were examined as P.W.2 to P.W.6, respectively and 13 documents were marked as Exs.A1 to A13. On behalf of the defendants, the second and third defendants himself were examined as D.W.1 and



D.W.2, respectively and one more witness viz., Mr.Chandra Reddy was examined as D.W.3 and 4 documents were marked as Exs.B1 to B4.

8. The Trial Court, after having considered the submissions made by either side and after considering the oral and documentary evidence, has ultimately decreed the suit. Aggrieved by the same, the defendants preferred the first appeal. The First Appellate Court also confirmed the findings of the Trial Court. Challenging the same, the defendants are before this Court by way of this Second Appeal.

Substantial questions of law:

9. At the time of admission, this Court formulated the following substantial questions of law:

“(1) When the burden is on the plaintiffs that the suit property was allotted to Gulla Reddy in an oral partition in the year 1982 and that he was in possession and enjoyment of the said property till he has executed the settlement deed in favour of his daughter Kavitha in the year 2005 and having failed to discharge their burden in this regard, the plaintiffs could not have any right over the suit property under the sale deed executed



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by the said Kavitha in the year 2006 whether the Courts below are correct in upholding the claim of the plaintiffs.

(2) When the plaintiffs are not entitled to take advantage of the weakness if any in the case of the defendants and it is for them to establish their case independent of any such weakness of the defendants as the burden to establish the title over the suit property is only on the plaintiffs whether the Courts below are correct in placing the burden on the defendants.”

Submissions on either side:

10. The learned counsel for the appellants/defendants would submit that the findings recorded by the Trial Court as well as the First Appellate Court are without any basis, that though the document viz., Ex.A1/Partition Deed dated 10.08.1972, which was relied upon by the First Appellate Court, is a self serving document and that no other documents were available to prove the title over the suit property. It is also contended that the Trial Court wrongly shifted the burden on the defendants and that the long possession and enjoyment of defendants 1 and 2 was not at all taken into consideration by both the Courts below. It is the further contention that the Trial Court relied upon the weakness of the defendants' case instead of expecting the plaintiffs to prove their case



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independantly on their own. In support of his contention, the learned counsel for the appellants/defendants relied upon the judgment of the Hon'ble Supreme Court in the case of ***Jagdish Prasad Patel (Dead) through legal representatives and another vs. Shivnath and others*** [reported in ***(2019) 6 SCC 82***].

11. Per contra, the learned counsel for the respondents/plaintiffs would submit that the findings of both the Courts below are based on the materials and that the plaintiffs have proved their title by virtue of Ex.A1/Partition deed dated 10.08.1972 and they have been in possession and enjoyment of the suit property. It is also her submission that the title of plaintiffs' predecessors could be established from Ex.A1/Partition Deed dated 10.08.1972 and other Revenue records. She would further submit that there are no substantial questions of law arising in this matter. Hence, she prayed to dismiss the suit.

12. This Court has given its anxious consideration on either side submissions.



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Analysis of the submissions of both sides:

13. According to the learned counsel for the appellants/defendants, the suit property originally belonged to one said Thimmarayappa, and it was not at all belongs to the plaintiffs' family. To put it in other words, it is the submission of the defendants that the said Mr.Thimmarayappa duly admitted that he has purchased the property from one Ms.Parvathammal vide Doc.No.2216/1956. Whereas on perusal of the said document, the said property does not belong to the said Parvathammal and the said document is in the name of different person qua Mr.A.Krishnamoorthi.

14. But, this Court is not in a position to agree with the submissions made by the defendants for the simple reason that the plaintiffs are having a title deed from the year 1972, which is not at all disputed by the defendants.

15. But, their only contention is that Ex.A1/Partition deed of the year 1972, is a self serving document.



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any title over the suit property.

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18. Now, the issue between the plaintiffs and the defendants is as to who is having better title over the suit property and not that who is the real owner of the property. Therefore, the documents which the defendants relied on, by way of additional documents, cannot be received at the stage of second appeal.

19. The learned counsel for the appellants relied upon the Judgment of the Hon'ble Supreme Court in **Jagdish Prasad Patel's** case. The relevant paragraph is paragraph 44 and the same is as follows:

“44.In the suit for declaration of title and possession, the respondent-plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the appellant-defendants. The burden is on the respondent-plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The respondent-plaintiffs have neither produced the title document i.e. patta-lease which the respondent-plaintiffs are relying upon nor proved their right by adducing any other evidence.



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As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.”

20. It is true that the person, who is approaching the Court seeking the relief of declaration, has to establish his title over the suit property, and he cannot fall back on the weakness of the other persons. This Court absolutely has no quarrel in the above settled principles of law. But, the ratio is not applicable to the instant case, as the plaintiffs has established their title by virtue of Ex.A1/Partition deed dated 10.08.1972. In the above judgment, it is further held that the Revenue entries are not the proof for title and the same is only for collection of Revenue or cess. In this case, the defendants, by way of the additional documents, are relying upon the revenue records. As per the said legal principles, the revenue records are not documents of title. Thus, this Court is of the view that the findings recorded by both the Courts below that the plaintiffs are the absolute owners, cannot be interfered with. Further, the substantial questions of law are answered in favour of the



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respondents/plaintiffs.

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21. In the result, this Second Appeal in S.A.No.1137 of 2011 and also C.M.P.No.5928 of 2023 are dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes/No

Index: Yes/No

Speaking order/Non-speaking order
apd

To

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



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C.KUMARAPPAN,J.

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