



S.A.No.460 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.460 of 2011

and

M.P.No.1 of 2011

Kasi Naicker ... Appellant/Defendant
- Vs -

1.Zaheer Hussain
2.Mubarak Basha ... Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 18.04.2009 made in A.S.No.62 of 2008 on the file of the learned Subordinate Judge, Kanchipuram, confirming the Judgment and Decree of the made in O.S.No.99 of 2004 dated 07.07.2008 on the file of the learned District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellant : Mr.D.Ravichander
For Respondents : Mr.N.Kumar



S.A.No.460 of 2011

WEB COPY

JUDGMENT

The instant second appeal has been filed at the instance of the defendant. The respondents herein are the plaintiffs before the trial Court.

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

3. **The brief facts which gives rise to the instant second appeal is that:**

The plaintiffs are the absolute owners of the suit property by virtue of a sale deed dated 16.07.2001. It is the submission of the plaintiffs that the plaintiffs are in possession and enjoyment of the suit property since from the date of their purchase. It was the further submission of the plaintiffs that the suit property originally belongs to one Andi Gounder, the grand father of the vendors 2 and 3. The defendant who has no semblance of right over the suit property, attempting to interfere with the



S.A.No.460 of 2011

WEB COPY

rights of the plaintiffs, hence, the plaintiffs came forward with the suit for declaration and injunction in respect of 12 cents of the property.

4. The said suit was resisted by the defendant that the plaintiffs' vendor Thiruppanammal, Kumar and Arumugam got the property through one Ranga Gounder. He also further disputed the four sale deeds, which is the parent deed of the plaintiffs measuring about 5 ½ cents. It was also further contended by the defendant that the plaintiffs' vendor has no right to sell 12 cents of the property. However, he admitted that the plaintiffs are entitled to have 5 ½ cents only. Hence, the defendant prayed to dismiss the suit.

5. Evidence and documents:-

Before the trial Court, the 1st plaintiff examined himself as PW1 and 10 documents were marked as Exs.A1 to A10 on the side of the plaintiffs. On behalf of the defendant, he himself was examined as DW1 and 14 documents were marked as Exs.B1 to B14.

6. Finding of the both the Court below:-



S.A.No.460 of 2011

WEB COPY

The trial Court, after having considered the submissions made by both sides and considering the oral and documentary evidence, arrived at a conclusion that though the parental deed, which is referred as Ex.A1 sale deed qua Exs.A4 to A7 is only for an extent of 5 ½ cents, by producing Ex.A10 sale deed, the plaintiffs have proved their vendor's title in respect of 12 cents of property. Therefore, granted the decree of declaration and injunction. The defendant took the matter in First Appeal and the First Appellate Court has confirmed the findings recorded by the trial Court and thereby dismissed the First Appeal. Aggrieved with the same, the defendant has filed the instant second appeal before this Court.

7. Substantial Question of Law:-

At the time of admission of the second appeal, on 17.07.2012, the following substantial questions of law has been framed:

"1. When Exs.A4 to A7 and A10, which were marked as parent documents of Ex.A1, relates to Survey numbers totally different from the Survey number of the suit property as mentioned in Ex.A1, are the Courts below still right in decreeing the



S.A.No.460 of 2011

WEB COPY

suit, holding that plaintiff established his title over suit property in Ex.A1 through parent documents, marked as Exs.A4 to A7 and A10?

2. When the suit property is a vacant site, as described in Ex.A1 but Ex.A10 marked as the parent document of Ex.A1 contains 7 cents of land with superstructure, are the Courts below right in decreeing the suit, holding that Ex.A1 is supported by present document, Ex.A10?

3. When the Courts below decree the suit believing Ex.A6, sale deed in favour of plaintiff, executed by one Mari Naickker with respect to a portion of land in suit survey number, are the Courts below right in disbelieving Exs.B5 and B6, through which the defendant claims right for another portion of land in the suit survey number from the very same vendor Mari Naickker?

8. Submissions of either side counsel:-

The learned counsel for the appellant/defendant would submit that both the Courts below have concurrently erred without going into the details of the documents submitted by the plaintiffs. Further, without



S.A.No.460 of 2011

WEB COPY

being any evidence, the trial Court found that the plaintiffs have got right, title over the suit property and has wrongly granted declaration. It is the submission of the learned counsel for the appellant that the vendor of Ex.A1-sale deed do not have any right over 12 cents of property. Therefore, the sale, which made by the vendor of the plaintiffs transferring the title for an extent of 12 cents, is illegal and the vendor cannot transfer one more extent than what he has, hence, prayed to allow the second appeal.

9. Per contra, the learned counsel appearing on behalf of the respondents/plaintiffs would vehemently contend that the trial Court as well as the First Appellate Court, based upon the evidence and also based upon the admissions made by the defendant, have granted decree. The learned counsel would further submit that since both the Courts below recorded the findings of fact that the plaintiffs' vendor has got right over the property for an extent of 12 cents, at the second appeal stage, while considering the question of law, this Court cannot go into the factual finding. It was also contended by the learned counsel for the respondent



S.A.No.460 of 2011

that since because there is a possibility to take a different view at the second appeal stage, this Court could not interfere with the findings recorded by both the Courts below. Hence, prayed to dismiss the second appeal.

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

11. Analysis of the submissions:-

The entire case revolves around the analysis of Exs.A1, A4 to A7 and A10. If we closely peruse Ex.A1-sale deed, this is the basis for the plaintiffs to seek the relief of declaration. Therefore, through Ex.A1 sale deed, the plaintiff purchased an extent of 12 cents in S.No.878/286 in Uthiramerur Village. On a close and harmonious reading of the recital of Ex.A1 sale deed, there is a reference that the vendor Thiruppanammal and others are having right of over 12 cents by virtue of Ex.A4 release deed and Exs.A5, A6 and A7 sale deeds which were of the year 06.08.1929, 12.12.1935, 01.09.1943 and 29.04.1946 respectively.



S.A.No.460 of 2011

WEB COPY

12. This Court has perused those documents, more particularly in respect of the suit property. If we peruse Ex.A4, it relates to S.No.878/208, but the suit property which was purchased by the plaintiffs is S.No.878/286. Therefore, though in Ex.A1 sale deed, it refers that Ex.A4 is also parental deed for Ex.A1, on a reading of the survey number, as rightly contended by the learned counsel for the appellant that Ex.A4 cannot be termed as parental deed for Ex.A1, as it relates to altogether a different property.

13. Coming to Ex.A5, it relates to the suit property in S.F.No.878/286. However, the extent covered in Ex.A5 sale deed is $1\frac{3}{4}$ cents. Similarly, in Ex.A7, the extent covered is $\frac{1}{4}$ cents approximately. Further, in Ex.A6, in S.F.No.876/286, the plaintiffs' predecessor in title have purchased to an extent of $19' \times 16' = 304'$. If we consider Ex.A7, that was the description also refers about an extent of $7\frac{1}{2}$ feet. Therefore even if add the above extent it won't be 12 cents. Whatever stated in the written statement, the defendant has admitted that the plaintiff has got right title over the S.F.No.878/286 for an extent of $5\frac{1}{2}$ cents. But, the plaintiffs purchased the property of an extent of 12 cents. In respect of



S.A.No.460 of 2011

WEB COPY

the same, the plaintiff introduced Ex.A10-sale deed, which is of the year 1911 and it relates to 7 cents. But while reading the description of property the same is in Kakkanallur Village and its S.No.3287. As already discussed the property, which now dealing is S.No.878/286 of Uthiramerur Village. Therefore, as rightly contended by the learned counsel for the appellant, Ex.A10 is no way helpful to the plaintiffs to support his case that his predecessor-in-title was having right over 7 cents in the suit property.

14. However, the trial Court as well as the First Appellate Court, without going into the minute details of the document viz., Exs.A4 to A7 has found that though Ex.A1-sale deed did not refer about Ex.A10-sale deed, still the plaintiffs' vendors can transfer the title in respect of 12 cents, is absolutely a perverse finding and more specifically contrary to the documentary and oral evidence.

15. It is true that at the second appeal stage, the findings of facts recorded by the trial Court as well as the First Appellate Court, cannot be



S.A.No.460 of 2011

WEB COPY

interfered with, normally. At the same time under Section 100 CPC, this Court is bound to interfere with the concurrent findings when such findings is perverse and contrary to materials on records and if the same is on the basis of misreading of evidence. Therefore, this Court is of the view that the power under Section 100 CPC has to be exercised and the findings of the trial Court as well as the First Appellate Court is liable to be interfered with. Thus, all the substantial questions of law are answered in favour of the defendant/appellant.

16. In the result, this Second Appeal is allowed, thereby the decree and judgment of the trial Court as well as the First Appellate Court is set aside. Eventually, the suit in O.S.No.99 of 2004 dated 07.07.2008 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.12.2023

ssn

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



WEB COPY



S.A.No.460 of 2011

To

1. The Subordinate Judge,
Kanchipuram.
2. The District Munsif cum Judicial Magistrate,
Uthiramerur.



WEB COPY



S.A.No.460 of 2011

C.KUMARAPPAN, J.,

ssn

S.A.No.460 of 2011
and
M.P.No.1 of 2011

12.12.2023