



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2023

Delivered on : 20.10.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.534 of 2023
C.M.P.No.16656 of 2023

N.Dhanapal

.. Appellant

Vs.

J.Muthu

.. Respondent

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 25.07.2022 made in A.S.No.7 of 2021 on the file of the Principal Subordinate Judge, Chengalpattu, confirming the judgment and decree dated 17.12.2020 made in O.S.No.229 of 2012 on the file of the District Munsif, Chengalpattu.

For Appellant : Mr.K.Duraimurugan

For Respondents : Mr.G.Balasubramanian for
Leela & Co.,

JUDGMENT

Defendant, who lost his case before both the courts below is the appellant herein.

2. The respondent/plaintiff had filed the suit for the relief of



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permanent injunction restraining the defendant, his men or Agents, representatives from interfering with the plaintiff's possession and enjoyment of the suit properties Item No.1 and 2.

3. The case of the plaintiff is as under:-

i) The plaintiff is the absolute and exclusive owner of item 1 and 2 having purchased Item No.1 from one V.Gandhi and item No.2 from one K.Ganapathy, under a Sale dated 13.4.2005 registered as document No.2903/2005 in the Sub Registrar, Thiruppurur.

ii) Subsequent to such purchase, the plaintiff has been in possession and enjoyment of the suit properties by carrying out mutation of records. The suit properties and some other properties in the Village, originally belonged to one Palandi Naicker having been acquired some of them by ancestral holding and some by self acquisition.

iii) The Plaintiff's vendor V. Gandhi son of Valappan Pillai had purchased Item No.1 of the suit properties from Palandi Naicker and his sons under a sale deed dated 29.1.1993 registered as document No.90/1993 in the office of SRO, Thiruppurur. The Plaintiff's another vendor one K.Ganapathy son of Kumarsamy Mudaliar had purchased Item No.2 of the suit properties from Palandi Naicker and his sons under a sale deed



dated 29.1.1993 registered as document No.91/1993.

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iv) On the basis of above purchase, the plaintiff's vendors were in possession and enjoyment of suit items 1 and 2 of the suit properties. On verification of right title to the suit properties, the plaintiff had purchased the same for a valid consideration. The plaintiff's title to the suit properties was passed on to him through his vendors in title.

v) The plaintiff had obtained a loan by way of Credit facility up to an extent of Rs.10,00,000/ by deposits of title deed in respect of the suit properties to and in favour of IOB, K.K. Nagar, Nesapakkam by creating Equitable Mortgage dated 17.5.2007 as document No.5326/2005 in the SRO, Thirupporur.

vi) The plaintiff has been in possession and enjoyment over the suit items till date from the day one of purchase. Except the Plaintiff none is having any manner of title or interest over the suit property. The defendant is a stranger and in no way connected with the suit property and without any manner of right or interest he had always been attempting to interfere with the peaceful possession and enjoyment of the suit properties by the Plaintiff which constrained the plaintiff to file the suit.



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4. The defendant had filed a written statement contending as

under:-

i) One Palandi Naicker had purchased 0.08 cents in S.No.27/1 from Govindasamy Naicker under a registered sale deed dated 9.8.1955. In the said registered sale deed dated 9.8.1955, the suit survey number has not been mentioned. Hence the said Palandi Naicker is not the owner of the suit property. Even in the two alleged sale deeds dated 29.1.1993 viz., plaint document Nos.5 and 6, the parent document deed dated 9.8.1955 has been mentioned. But in the parent document, the suit survey number has not been stated. Moreover, in the registered sale deed dated 9.8.1955, only 0.08 cents in S.No.27/1 was purchased by the plaintiff. In the plaint document Nos.5 and 6, S.No.27/3 has been mentioned with an extent of Ac.1.33 cents. Hence the said Palandi Naicker is not the owner of the S.No.27/4. But the patta was wrongly granted in the name of Palandi Naicker for which the defendant had given a Petition to the Tahsildar, Chengalpattu. Further, there was no patta in the name of Palandi Naicker after his purchase in the year 1955.

ii) The suit property is not the ancestral property of the Palandi Naicker, since there was no Patta in his name. Plaint document Nos. 5 and



6 would also prove that the Palandi Naicker had no title to the suit property.

The plaint documents prove that Palandi Naicker owns property in S.No.27/1 and S.No.27/3, and not in suit S.No.27/4. Hence the said Palandi Naicker had no right, title and possession in the suit S.No.27/4.

iii) The defendant had purchased S.No.27/4A measuring 0.06 cents out of 0.17 cents from Radhakrishnan under a registered Sale deed dated 27.4.1980. The property purchased by the the defendant is on the North of S.No.27/4B. After such purchase, the defendant is in possession and enjoyment of the S.No.27/4A measuring 0.06 cents being the owner of the same.

iv) Before the purchase by the defendant, during the year 1980, there was no document in the name of Palandi Naicker. The first document created by Palandi Naicker is of the year 1993 that too after 13 years from the date of purchase by the defendant. S.No.27/4 does not belong to Palandi Naicker and he never enjoyed the property in S.No.27/4. In order to grab the property of the defendant, Palandi Naicker had created documents.

v) Palandi Naicker, who had no right and title to the property in S.No.27/4A, cannot execute any document and if any document is created,



it is void in law and therefore, the suit is liable to be dismissed.

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5. On the basis of the above pleadings, the Trial Court had framed the following issues:-

i) Whether the plaintiff was in possession of items 1 and 2 of the suit properties?

ii) Whether the extent of the suit property mentioned is incorrect?

iii) Whether the plaintiff is entitled to permanent injunction in respect of the suit properties?

iv) To what other relief, the plaintiff is entitled?

6. During the trial, the plaintiff examined himself as PW1 and Exs.A1 to Ex A7 were marked. The defendant examined himself as DW1 and Exs.B1 and Ex B2 were marked.

7. On completion of trial, after analysing the oral and documentary evidence, the Trial Court had decreed the suit as prayed for. On appeal, the appellate court had concurred with the findings of the Trial Court. Aggrieved against the same, the present Second Appeal has been filed by the



defendants.

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8. Heard the learned counsel appearing for the parties and perused the materials available on record including the judgments rendered by the courts below.

9. Apart from raising many contentions with regard to appreciation of the oral and documentary evidence by the courts below and thereby anticipating remand of the matter, the appellants/defendants sought to challenge the findings of the courts below on the following grounds:-

i) The lower appellate court failed to taken into consideration the discrepancies with regard to survey numbers in the documents filed alongwith the plaint.

ii) Palandi Naicker, whom the plaintiff claims to be the original owner was not at all the owner of the suit properties and the said aspect was not properly considered by the lower appellate court.

iii) The courts below have erred in shifting the burden to prove the case upon the defendants when the plaintiff had sought for the remedy.

iv) The courts below ought to have given a chance to the defendants



to produce the original documents pertaining to the proof of his ownership.

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10. To be precise, the attempt of the appellants in the Second Appeal is to harp on the issue of appreciation of factual aspects by the courts below.

11. It is a case where the the plaintiff, by producing some documents viz., document of title in his favour, parent documents and documents to prove mutation of revenue records, sought for permanent injunction against the defendants. The courts below, especially, the lower appellate court has gone through even the parent document of the plaintiffs viz., Exs.A2 and A3 and found that the recitals therein would prove that the property comprised in S.No.27/3 was ancestral property and some property were obtained through partition and some of them were purchased and the same were subdivided under the UDR Scheme as S.No.27/4A. By re-appreciating the continuous documents from the year 1993 and the revenue records produced by the plaintiff, the appellate court has concurred with the finding of the Trial Court in granting permanent injunction in favour of the plaintiff.



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12. The appellate court has also dealt with the issue raised by the appellants that the suit in simplicitor for permanent injunction is not maintainable without seeking a relief of declaration of title and found that the plaintiff has clearly established his title by producing relevant documents, however, the defendants, who question the title of the plaintiff, has not even ventured to produce the original of Ex.B1 to prove the adverse title and it appears that even when he was questioned during the cross-examination during the trial, he had come out with only evasive replies and thus, the court came to the conclusion that the question of title need not be gone into.

13. A perusal of the judgments rendered by the courts below, this court is of the view that both the courts below have thoroughly appreciated the oral and documentary evidence before granting the relief of permanent injunction in favour of the plaintiff and they do not warrant any interference by this court.

14. The grounds raised by the appellants in the present Second



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Appeal are only on re-appreciation of factual aspects by the courts below during trial and appellate stage. If at all the appellants felt that they were aggrieved by the conduct of trial and the demeanour of the courts below, the remedy which was available to the appellants is elsewhere. When the defendants have left the bus without delving upon the factual aspects before the Trial Court and the first appellate court, it may not be appropriate for the second appellate court to initiate for another round of litigation by remanding the matter to the court below.

15. Coming to the questions of law, both the questions, raised by the appellants in the Second Appeal camouflaging as substantial questions of law, are reproduced hereunder for ready reference:-

"1. Whether the petitioner ready to produce the Original Sale deed dated on 27.04.1980 vide Doc.No.558 of 1980 for adduce further evidence for petitioner side to prove the suit property originally owned by the petitioner property without any valid reasons sustainable in the eye of law.

2. Remitting back the above suit to the Trial Court for



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marking of original documents to prove the suit schedule property is owned by the petitioner in the absence of any objection by the counsel for the plaintiff is acceptable in law."

16. On a bare reading of the above, this court is of the view that they cannot be construed as questions of law warranting admission of the Second Appeal and they would only reflect a wimpy attempt on the part of the appellants to gain a remand of the matter and thereby to prolong and protract the issue by abuse of law. Therefore, this court is of the firm view that it is not obliged to frame any question of law in the present Second Appeal in the light of the decision of the Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** wherein it has been held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of



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appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate



Court."

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17. In the result, the Second Appeal fails and the same is dismissed without being admitted. No costs. The connected miscellaneous petition is also dismissed.

20.10.2023

ssk.

To

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



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A.D.JAGADISH CHANDIRA,J.

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P.D. JUDGMENT IN
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