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S.A.No.583 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.583 of 2023

Dhakchinamoorthy

... Appellant

Vs.

Kamsalammal (Died)

Sivalingam (Died)

Sundram @ Sundramoorthy (Died)

1. Hamsa

2. Ramanjal

3. Ramesh

4. Kumutha

5. Amutha

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the judgement and decree dated 25.11.2022 in A.S.No.51 of 2014 on the file of the Additional Sub Court, Dharmapuri, (including the order dated 25.11.2022 in I.A.No.181/2015 therein) confirming the judgement and decree dated 25.06.2014 in O.S.No.293 of 2010 on the file of the District Munsiff Court, Dharmapuri.



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For Appellant : Mr.T.Dharani

JUDGEMENT

The Second Appeal has been filed by the plaintiff/appellant, who lost his case before both the Courts below.

2. The appellant herein/plaintiff, has filed the Suit seeking the relief of declaration and permanent injunction. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, the appellant/plaintiff has filed this present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

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

4.1. The defendant is the mother of the plaintiff, defendants 2 and 3 are the brothers of the plaintiff. 4th defendant is the wife of the 2nd defendant. 5th defendant is the wife of the 3rd defendant. The 6th defendant is the son of the 2nd defendant. 7th defendant is the son of the 3rd defendant.



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4.2. The suit property and other properties were ancestral joint family properties of the plaintiff and defendants 2 and 3 and they are in possession of the same. Since a dispute arose between the plaintiff and defendants 2 and 3, a family arrangement entered between the plaintiff and defendants 2 and 3 on 26.05.1989, which was termed as 'பாகு பாத்திய விடுதலை பத்திரம்'.

4.3. In the said deed, the family properties were divided as ABC Schedule. 'A' scheduled property was allotted to the 2nd defendant, 'B' scheduled property was allotted to the plaintiff and the 'C' scheduled property was allotted to the 3rd defendant and possession was also handed over as per the said deed. The plaintiff is an illiterate and he had failed to change the revenue records immediately after the suit properties were allotted to him and subsequently, when he approached defendants 2 and 3 for making arrangements to change the revenue records, they replied that it is not necessary and hence, the plaintiff failed to change the revenue records of the suit properties.

4.4. The 3rd defendant alienated his share and executed a registered instrument and the 2nd defendant is a witness to that document.



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The 2nd defendant also alienated along with defendants 1 to 6 and executed a sale deed before the Sub Registrar Office, Pennagaram. The 2nd defendant, with a mala fide intention, changed the patta of the land, which was allotted to the plaintiff and got patta No.233. On coming to know about the same, the plaintiff had given a police complaint and the police, after verifying the records, warned defendants 2 and 3 not to disturb the possession of the plaintiff.

4.5. On 09.07.2010, the 2nd defendant executed a sale deed in favour of the 6th defendant to an extent of 1.41 acres in Survey No.96/2 and the same was registered in document No.2126/2010 before the Sub Registrar, Pennagaram. The 2nd defendant was not at all having any right to execute the sale deed in favour of the 6th defendant. In order to create the encumbrance the 2nd defendant had executed the said document and the same is unlawful.

4.6. The plaintiff has improved the land and is doing agriculture in the property allotted to him, by paying kist for the suit properties. The defendants have alienated their properties and made an attempt to disturb the possession and enjoyment of the plaintiff in the suit



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property and thereby, the plaintiff has filed the Suit seeking the relief of declaration and permanent injunction not to disturb the peaceful possession and enjoyment of the suit property by the plaintiff and consequently, to declare the sale deed dated 09.07.2010 as null and void and sought for injunction restraining the 6th defendant from making any further alienation in respect of the suit property.

5. The 6th defendant has filed the written statement denying the averments in the plaint and it was also adopted by all other defendants. The crux of the averments in the written statement is as under :-

5.1. The partition release deed produced by the plaintiff is a forged and fabricated one by the plaintiff in the year 1989 with the help of the witnesses.

5.2. The suit properties are not joint family properties and same absolutely belong to the mother-in-law of the 6th defendant and the said property was given to the 6th defendant. So, the plaintiff is not at all having any right or share over the same. Further, the suit property absolutely belongs to the father of the 6th defendant/2nd defendant and the same is a separate



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property of the 2nd defendant and the patta was issued in the name of 2nd defendant.

5.3. For the past 25 years, the 2nd defendant is enjoying the suit properties with the knowledge of the plaintiff and others and the plaintiff had not questioned the same. Further, the plaintiff is not in possession and is not having any right over the suit properties. The partition deed dated 26.05.1989 is not a valid one and it was created only for the purpose of grabbing the land. The description of the suit property is not correct. The court fee paid by the plaintiff is wrong.

6. The 6th defendant also filed an additional written statement, which was adopted by the other defendants, wherein it is contended that the plaintiff originally took a stand that there was a terraced house in the suit property, whereas, in the amended plaint, he has taken a different version as if he is doing agriculture. It is further contended that the plaintiff was not doing any cultivation in the suit property and the same was invented for the purpose of the suit.

7. On the above pleadings, the Trial Court framed the following issues :-



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1. Whether the suit property belongs to the plaintiff?
2. Whether the plaintiff is entitled to the relief of declaration as to title as prayed for?
3. Whether the plaintiff is in possession of suit property?
4. Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from interfering with peaceful possession of suit property?
5. Whether the plaintiff is entitled to the relief declaration as to document 2126/2010 as Null and void?
6. Whether the plaintiff is entitled to the relief of permanent injunction against 6th defendant as prayed restrains him from creating encumbrance?
7. To what other relief's parties are entitled to?

8. During trial, on the side of the plaintiff, plaintiff examined himself as PW1 and one A.Rathinam was examined as P.W.2 and through PW1, Ex.A1 to Ex.A9 were marked. On the side of the defendants, 6th defendant was examined as DW1 and through him Ex.B1 to Ex.B5 were marked. In the cross examination of DW1, Ex.A10 to Ex.A.12 were marked. One Raja was examined as DW2. The Village Administrative Officer of the suit village was examined as DW3 and through her Ex.X1 and Ex.X2 were



9. The trial Court holding that it is not inclined to consider the Partition Deed even for collateral purpose, since it is an unregistered and unstamped document and also finding that the plaintiff had miserably failed to prove his title and possession of the suit property, dismissed the Suit, aggrieved against which, the plaintiff filed the Appeal Suit.

10. During the Appeal, the appellant/plaintiff has filed an application in I.A.No.181 of 2015 under Order 41 Rule 27 of CPC to receive additional documents and it was heard along with Appeal.

11. The first appellate Court, based on the grounds of Appeal had framed the following points for consideration :-

1. Whether the application in I.A.No.181 of 2015 is entitled to be allowed ?
2. Whether the plaintiff is entitled to get the relief of declaration of title and permanent injunction in respect of the suit property as claimed by him?
3. Whether the plaintiff is entitled to get the relief declaration of title and permanent injunction in



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respect of the document dated 09.07.2010?

4. Whether the trial Court has passed the judgment without considering the oral and documentary evidence?
5. Whether Judgment and Decree of the trial Court is liable to be set aside?
6. Whether the appeal is entitled to be allowed ?

12. So far as the Application filed by the appellant is concerned, the first appellate Court, had dismissed the same contending that the document sought to be marked as additional document is a revenue record, which could have been obtained from the Revenue Department, whereas, the appellant had not taken any initiative to obtain and file the same during the trial itself, which took place for about 3 1/2 years.

13. Further, the first appellate Court, after considering the oral and documentary evidence, had dismissed the Appeal Suit by confirming the judgment and decree passed by the trial Court in O.S.No.293 of 2010 dated 25.06.2014. Aggrieved against the concurrent findings of the Courts below, the present second appeal has been filed.



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14. Learned counsel for the appellant submitted that the trial Court, despite the oral evidence of PW2, with regard to the execution of the Partition Deed, had dismissed the suit and thereby, he seeks for admission of the present second appeal.

15. Heard the learned counsel for the appellant, perused the judgments of the Courts below in the light of the grounds raised by the appellants.

16. The case of the plaintiff is that the suit properties were ancestral properties belonging to his family and he acquired the same vide a Partition Deed dated 26.5.1989 entered into between himself and defendants 2 and 3, his brothers and taking advantage of his inaction in taking steps for mutation of revenue records, his share of the properties were sought to be alienated by the defendants and hence, he had to file the suit seeking the relief of declaration, permanent injunction and also to declare the sale deed dated 9.7.2010, an alienation already made by the defendants, as null and void whereas, the defendants would contend that the suit property is not an ancestral property as claimed by the plaintiff and it belonged to the mother in



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law of the second defendant. They would further contend that the alleged partition deed is not only an unregistered and unstamped document, but also, it is a forged and fabricated document created by the plaintiff to defeat the rights of the defendants.

17. A perusal of the judgments of the Courts below would reveal that the plaintiff has failed to prove his case that the suit properties are ancestral properties by producing relevant documents in the name of his ancestors and he has produced an unregistered and unstamped document styled as partition deed to substantiate his claim that a partition took place between himself and his brothers viz., defendants 2 and 3 and thereupon, he acquired the suit properties. Such a document being an unregistered and unstamped, the courts below have rightly disbelieved and declined to consider the same holding that it is not entitled to be considered even for collateral purposes.

18. It is also seen that the plaintiff himself has admitted that he has not produced any document either in the name of his grandfather or father to establish that the suit properties are ancestral properties whereas, the



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deposition of DW3, the Village Administrative Officer and the records produced by him and marked as Ex.X2 would reveal that the revenue records for the suit properties stand in the name of the second defendant. The specific admission of PW1 is that though he knew about mutation of revenue records in the name of the defendants and he has taken steps to cancel the same. However, it appears that he has not produced any document to substantiate the action taken by him to cancel the mutation of revenue records. Appreciating all the above aspects, the courts below have rightly held that the plaintiff has not proved his case and thereby declined to grant the relief sought for by him.

19. On analysis of the entire oral and documentary evidence and the judgment and decree of the Courts below, this Court is able to see that the Partition Deed produced by the plaintiff is an unregistered one and thereby, the appellant/plaintiff has failed to prove his title and possession in respect of the suit property.

20. Therefore, it is clear that on re-appreciating the entire oral and



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documentary evidence, the first appellate Court had concurred with the findings of the Trial Court both on facts and in law and rightly confirmed the judgment and decree of the Trial Court .

21. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that no substantial question of law is involved to admit this second appeal.

22. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically 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 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



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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."

23. In view of the above, sans any substantial question of law, the Second Appeal fails and the same is dismissed confirming the concurrent findings rendered by the Courts below. No costs.

12.09.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Additional Sub Court, Dharmapuri.
2. The District Munsiff Court, Dharmapuri.
3. The Section Officer, VR Section, High Court of Madras.



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