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S.A.No.648 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.648 of 2013
and M.P.No.1 of 2013

1. Parasuraman
2. Annanalai
3. Santhi
....Appellants

Vs.

Kumar
Respondent

...

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgement dated 04.01.2013 in A.S.No.53 of 2011 on the file of the Sub-Court, Tiruvannamalai, confirming the decree and judgment dated 10.10.2011 in O.S.No.136 of 2007 on the file of the District Munsiff cum Judicial Magistrate, Chengam.

For Appellants : Mr.G.Rajan

For Respondent : Mr.K.Venkatasubban
for M/S.Sarvabhavman Associates



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JUDGMENT

This Second Appeal has been filed by the defendants against the Judgment and Decree dated 04.01.2013 in A.S.No.53 of 2011 on the file of the Sub-Court, Tiruvannamalai, confirming the decree and judgment dated 10.10.2011 in O.S.No.136 of 2007 on the file of the District Munsiff cum Judicial Magistrate, Chengam.

2. The appellants herein are the defendants and the respondent is the plaintiff in the suit.

3. The brief case of the plaintiff is as follows

The plaintiff filed the suit in O.S.No.136 of 2007 on the file of the District Munsiff cum Judicial Magistrate, Chengam, for the relief of declaration and permanent injunction against the defendants and his agents not to interfere in the peaceful possession of the plaintiff suit properties in S.F.No.6/1D, 6/2D. According to the plaintiff, the suit property originally belonged to minor sons Kasi and Annamalai of Parasuraman by way of registered sale deed dated 20.03.1964 was purchased by one Munusamy



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and he was in continuous possession and enjoyment of the suit property was further transferred to the plaintiff by way of oral sale agreement dated 20.04.2007 and the sale deed was not registered due to lapse of time on that date but the sale deed was also not registered on the next dated 21.04.2007 because the defendants kidnapped the said Munusamy, so his wife lodged complaint before the Vanapuram Police Station and they have issued C.S.R. The suit properties are situated adjacent to the properties of the defendants and when Munusamy to sell his properties, the defendants tried to purchase the suit property but when the offer was not accepted by Munusamy, the defendants kidnapped him but Munusamy executed a registered special power of attorney in the name G.Periyaswamy on 24.04.20007 who in turn executed a sale deed in the name of the plaintiff on 26.04.2007 and the plaintiff transferred the patta and chitta in his name and in possession and enjoyment of the suit property, hence the defendant's by a forged sale deed was trying to disturb the possession and enjoyment of the suit property, hence, the plaintiff filed the suit for declaration and for permanent injunction and prays to decree the suit with costs.



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4. The brief case of the defendants are as follows

According to the defendants, the properties were originally ancestral properties of Munusamy Gounder who begot Parasuraman through 1st wife Parvathiammal and inherited his ancestral properties and purchase the suit properties along with Parasuraman as joint family properties on 20.03.1964 and till now enjoying as joint family properties and 2nd wife 1st daughter Ellamma who married Annamalai Gounder and begot Sankar and 2nd daughter Unnamalai was to married Duraisamy. On 11.03.1977, the father of the defendants and Munusamy Gounder and his son executed an agreement between them regarding the suit properties and the said agreement, the father of the 1st and 2nd defendant's laid down cement pipe line inside the earth and was continuously taking water. The defendants have jointly purchased the suit properties from Parasuraman son of Munusamy on 24.04.2007 and is in possession and enjoyment of the suit properties. This defendants further submits that the said Munisamy Gounder executed two settlement deeds in favour of his 2nd wife and his grandson Sivakumar regarding the suit properties. The plaintiff are the pangalis of the defendants. The plaintiff purchased the undivided $\frac{1}{2}$ share of the suit



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properties. The plaintiff and defendants are the co-sharers and so the plaintiff cannot claim permanent injunction against the defendants. The defendants hence through a valid sale deed date 24.04.2007 purchased the suit properties and so the plaintiff should filed a suit for recovery of possession and not for injunction. Hence, prays to dismiss the suit.

5. Before the trial Court, on the side of the plaintiff PW1 to PW4 were examined and Exs.A1 to A6 were marked. On the side of the defendants DW1 to DW3 were examined and Exs.B1 to B6 were marked.

6. The trial Court, after taking into consideration of the oral and documentary evidence of both sides, decreed the suit.

7. Aggrieved over the Judgment and decree of the trial Court, the defendants preferred an appeal in A.S.No.53 of 2011 on the file of the Sub-Court, Tiruvannamalai, which confirmed the Judgment and decree of the trial Court and dismissed the appeal.

8. Challenged the Judgement and decree of the lower Appellate Court,



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the defendants have filed this second appeal and the same was admitted on

the following substantial questions of law:-

1. Is not the first appellate Court wrong in decreeing the suit by overlooking the admission made by PW1 and PW2 that the properties was purchased out of surplus yielded from the ancestral nucleus on extraneous considerations and by ignoring Sec.58 of the Indian evidence Act ?

2. Whether the first appellate Court is correct in granting the relief of injunction by overlooking the rights conferred and enjoyed by the defendants with the permission of the vendor of the plaintiff under Ex.B2?

3. Is not the first appellate Court wrong in dismissing the suit by ignoring the oral and documentary evidence ?

9. Heard the learned counsel appearing for the appellants/defendants and the learned counsel for the respondent/plaintiff and perused the materials available on record.

10. The learned counsel appearing for the appellants/defendants submitted that the suit properties are the joint family properties and the suit



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properties stand in the name of Munusamy Gounder purchased out of income derived from his ancestral properties. In the joint family properties, the said Munusamy Gounder has no right to execute the sale deed for entire property in favour of the plaintiff and the suit properties belongs to Munusamy Gounder and his son viz., Parasuraman. Further, already there was an agreement between the said Munusamy Gounder and the defendant's father with regard to taking water from the Well through cement pipe line under the earth in the 1st item of the suit properties and continuously taking water from his well and the said agreement was marked as Ex.B1. All the defendants have jointly purchased the schedule mentioned properties from one M.Parasuraman, son of A.Munusamy Gounder on 24.04.2007 for a valuable consideration. He further submitted that the said Munusamy was kidnapped by the defendants, however, the said factum has not been proved by the plaintiff. He further submitted that the suit properties are purchased out of joint family nucleus and the said Munusamy is only having half share in the suit properties and therefore, he is not entitled to sell the entire right in the suit properties. Further, the suit properties were purchased out of joint family income and the same was admitted by PW2. So, the plaintiff is to file the suit for partition and not for the relief of declaration and injunction.



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Hence, he prays for allowing this second appeal.

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11. The learned counsel for the respondent/plaintiff submitted that the suit property originally belonged to minor sons Kasi and Annamalai of Parasuraman by way of registered sale deed dated 20.03.1964 was purchased by one Munusamy Gounder and he was in continuous possession and enjoyment of the suit property was further transferred to the plaintiff by way of oral sale agreement dated 20.04.2007 and the sale deed was not registered due to lapse of time on that date but the sale deed was also not registered on the next dated 21.04.2007 because the defendants kidnapped the said Munusamy Gounder and so his wife lodged complaint before the Vanapuram Police Station and they have issued C.S.R. The suit properties are situated adjacent to the properties of the defendants and when Munusamy to sell his properties, the defendants tried to purchase the suit property but when the offer was not accepted by Munusamy, the defendants kidnapped him but Munusamy Gounder executed a registered special power of attorney in the name G.Periyaswamy on 24.04.20007 who in turn executed a sale deed in the name of the plaintiff on 26.04.2007 and the plaintiff transferred the patta and chitta in the name of him and in



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possession and enjoyment of the suit property. The defendants by a forged sale deed was trying to disturb the possession and enjoyment of the suit properties. He further submitted that Ex.A1 is the original sale deed in the name of Munusamy Gounder through which he purchased the suit properties and so the properties are the self acquired properties of the Munusamy Gounder and he is entitled to execute sale deed in favour of the plaintiff. He also further submitted that the plaintiff has proved his case that the properties are the self acquired properties of the said Munusamy Gounder. Hence, he prays to dismiss the second appeal.

12. On considering the submissions on either side, the trial Judge framed the necessary issues and held that the plaintiff has purchased the property is valid one and granted the relief of declaration as he prayed for but with regard to injunction, the defendant have right to take water through cement pipe line. Accordingly, the suit was decreed.

13. Against which, the defendants preferred an appeal in A.S.No.53 of 2011 wherein the Lower Appellate Judge analysing the facts and evidence and held that the suit properties were purchased by Munusamy Gounder and



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the sale deed is valid one and the defendants have no right over the suit properties based upon their alleged sale deed by confirming the findings of the trial Court. Aggrieved over the findings of the Lower Appellate Court, the defendants have preferred this second appeal before this Court.

14. On a careful consideration of the materials available on record and the submissions made by both the learned counsel, it could be seen that there was some dispute between the said Munusamy Gounder and the defendants with regard to execution of the sale deed. Thereafter, the said Munusamy Gounder gave a Special Power of Attorney to one Periyaswamy, who executed the sale deed in favour of the plaintiff on 26.04.2007. But the defendants obtained the sale deed one Parasuraman son of Munusamy Gounder.

15. As discussed above, the plaintiff established that the suit properties was purchased by him through his vendor Munusamy Gounder and the sale deed executed in favour of him is valid one. The defendants failed to establish that the properties were the joint family properties. Hence, the sale deed executed by Parasuraman son of Munusamy Gounder could



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not be confer any title for the reason that his vendor Parasuraman has no right over the suit property and it is a absolute property of Munusamy Gounder. All these facts were rightly discussed by the Courts below with regard to declaration relief which needs no interference. Therefore, the questions of law are answered against the appellants.

16. As per the original sale agreement Ex.B1, the defendants were permitted to take water from the well by laying cement pipe line under the earth in the 1st item of the suit properties and the same was accepted by the plaintiff. Hence, the defendants have right to take water through cement pipe line under the earth of the suit properties and the plaintiff has not disturbed the defendants with regard to taking water from the Well. Accordingly, the trial Judge had directed the plaintiff not to cause any disturbance in respect of taking water through cement pipe line as per Ex.B1. Hence, the findings of the Courts below with regard to injunction relief also confirmed.

17. The Second appeal is dismissed as no merits. The findings of the Courts below are confirmed and the suit is decreed in respect of the relief of declaration as prayed for. With regard to the relief of injunction as per



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Ex.B1 the plaintiff not to disturb the defendants in respect of taking water from the well through cement pipe line under the earth of 1st item of the suit properties. Consequently, connected miscellaneous petition is closed. No costs.

13.02.2023

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index :Yes/No

msrm

To

1. The Sub- Court, Tiruvannamalai.
2. The District Munsiff cum Judicial Magistrate, Chengam.
3. The Section Officer,
VR Section.



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T.V.THAMILSELVI, J.

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