



S.A.No.765 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.765 of 2023

and

C.M.P.No.24081 of 2023

1. Navaneetham
 2. Gunasekarane
 3. Rajeshwari
- ... Appellants

Vs.

1. Jayanthi
 2. Lakshmi
 3. Indirani
 4. Pushba
 5. Sumathi
 6. Kumaresan
 7. Mangalakshmi
- ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 13.12.2022 in A.S.No.18 of 2020 on the file of the Additional Subordinate Court, Puducherry, and confirming the judgment and decree dated 04.11.2019 in O.S.No.209 of 2005 on the file of the Principal District Munsif Court, Puducherry and allow the present second appeal.



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For appellants : Mr.V.S.Senthil Kumar

For respondents : No appearance

JUDGMENT

This appeal has a chequered history. The plaintiffs in the suit in O.S.No.209 of 2005 on the file of the Principal District Munsif Court, Puducherry, whose suit has been dismissed and the dismissal had been confirmed by the learned Additional Subordinate Judge, Puducherry are the appellants before this Court.

2. Before discussing the suit which is now the subject matter of the appeal, it is necessary to briefly touch upon the earlier proceedings that has been initiated by the plaintiffs. It appears that initially the second and fourth plaintiffs had filed a suit for delivery of possession in O.S.No.1515 of 1996 on the file of the II Additional District Munsif Court, Puducherry, against the third defendant and three others. After trial, when the suit was posted for pronouncing judgment, they withdrew the suit with leave to file a fresh suit.



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3. The learned II Additional District Munsif, Puducherry, granted leave as requested by the plaintiffs. Thereafter, the plaintiffs had filed another suit in O.S.No.21 of 2000 before the Principal District Munsif Court, Puducherry, for permanent injunction as against the defendants herein and others. This suit was also withdrawn by the plaintiffs pursuant to the directions of this Court in C.R.P.No.390 of 2003. This revision was filed by the plaintiffs challenging the dismissal of the application seeking amendment of the prayer to include the relief of declaration in respect of the suit property.

4. By an order dated 18.06.2004, this Court, while dismissing the revision had granted liberty to the plaintiffs to file a fresh comprehensive suit within a period of two months from the date of the order. This suit, now the subject matter of the appeal, was thereafter, filed by the plaintiffs for a declaration and for a permanent injunction or alternatively for delivery of possession.



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5. It is seen that thereafter, the appellants have amended the plaint to include the relief of to declare the sale deed dated 17.11.1993 executed by the first defendant in favour of the second defendant and sale deed dated 11.03.1997 executed by the second defendant in favour of the third defendant as null and void.

6. For the sake of convenience, the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

7. It is the case of the plaintiffs that one Panderi Gounder and the first defendant are brothers and are the sons of one Govinda Gounder of Madagadipet Palayam Village. After the death of their father, Panderi Gounder and the first defendant were living together and they entered into family arrangements, registered partition and oral partition.

7.1. Under the oral partition, the suit property was allotted to the



share of Panderi Gounder, who enjoyed the property and who died in the year 1981. After the death of Panderi Gounder, the plaintiffs who are his wife and children took possession of the property and were in enjoyment of the same without any interference from any other persons. The plaintiffs had also sold two items that had fallen to their share to the first defendant in the year 1984. That apart, they had mortgaged one item of the property which is the subject matter of the oral partition to one Murugesan in the year 1986. The first defendant had also mortgaged one item which fell to his share in the oral partition, with one Shankar in the year 1988.

7.2. The said Panderi Gounder and his brother have mortgaged the property though patta stands in the name of the others. Therefore, it is their contention that the oral partition had been acted upon. The plaintiffs would submit that they had raised a brick kiln over the suit property for which adangal certificates were issued by the Revenue Department and the tax receipts are also filed.



7.3. Meanwhile, the Government of Puducherry had initiated land acquisition proceedings in respect of the suit property and acquired land to an extend of 2 ares and 35 centiares. Since the patta stands in the name of Panderi Gounder and the first defendant, notice was issued to both plaintiffs and the first defendant. It is, at this juncture, that the first defendant realised that the suit property which is in the Villupuram-Pondy National Highways Road would yield high value.

7.4. Therefore, the first defendant started interfering with the possession of the plaintiffs and taking advantage of the oral partition, had sold the suit property to the second defendant under a registered sale deed dated 17.11.1993 as if he had a half share in the property. The plaintiffs immediately addressed the first and second defendants informing that the first defendant has no right to sell the suit property. However, there was no response to the said notice. On 13.03.1994, the second defendant on the strength of the sale in his favour entered into the suit property and attempted to construct a shed. This attempt was



successfully prevented and the second plaintiff had lodged a complaint before Thirubuvannai Police Station on 13.03.1994. However, no action was taken. Therefore, the plaintiffs were constrained to file a suit for a declaration and permanent injunction in O.S.No.1515 of 1996. This suit was withdrawn with liberty to file a fresh suit. Meanwhile, the second defendant sold the property to the third defendant under a registered sale deed dated 11.03.1997. Thereafter, the plaintiffs had filed suit O.S.No.21 of 2000 for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.

7.5. Since the defendants had denied the title of the plaintiffs, the plaintiffs took out an application to amend the suit relief for declaration of title which was dismissed and challenging the same, C.R.P.No.390 of 2003 was filed, which was also dismissed, however, granting liberty to the plaintiffs to file a comprehensive suit. Therefore, the plaintiffs had come forward with the suit in question.



7.6. The third defendant who has purchased the suit property from the second defendant to whom the first defendant had sold the property had contested the proceedings. It is the case of the third defendant that under the registered partition in the year 1993, the suit property was allotted to the share of Panderi Gounder and he was in possession and enjoyment of the property. It is the case of the third defendant that in the oral partition between Panderi Gounder and the first defendant, the eastern half of the property measuring 8 kuzhi and $1\frac{3}{4}$ veesam was allotted to the first defendant. After acquiring the property, the first defendant was in possession and enjoyment of the eastern half absolutely and he had executed a sale deed on 17.11.1993 in favour of the second defendant.

7.7. After the purchase, the second defendant had constructed a house and obtained electricity connection to the house. Thereafter, she had sold the property through her power agent and from the date of purchase, it is the third defendant who is in possession and enjoyment of the suit property without any interference and he is paying house tax



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and other taxes in the suit property.

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7.8. The defendants would submit that the suit is hopelessly barred by limitation. The second defendant entered into the possession and enjoyment of the suit property in the year 1984 and had put up construction. The plaintiffs had already filed a suit for the very same relief and withdrawn the same. Therefore, the suit is not maintainable and the plaintiffs had not paid proper court fees and sought for dismissal of the suit.

7.9. The plaintiffs who had not taken out an application for setting aside the sale deed executed by the first defendant in favour of the second defendant and also the sale deed executed by the second defendant in favour of the third defendant. Therefore, the plaintiffs had taken out an application in I.A.No.4529 of 2005 for amending the relief in O.S.No.209 of 2005. The said application was allowed on 17.04.2006 wherein the plaintiffs had included the relief which reads as follows:

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“Declaring that the sale deed executed by the first defendant in favour of the second defendant on 17.11.1993 and the sale deed executed by the second defendant in favour of the third defendant on 11.03.1997 are null and void and not binding on the plaintiffs”

7.10. The third defendant had filed a written statement *inter alia* contending that the amended prayer is beyond time and cannot be accepted in the light of the order passed by this Court in C.R.P.No.390 of 2003. The defendants would submit that the plaintiffs themselves have knowledge of the sale deeds even at the time of O.S.No.1515 of 2019 as an Advocate Commissioner had been appointed and his report has noted that there is a house in the suit property. The Advocate Commissioner also filed photographs in the Court. They clearly show that the entire suit is misconceived and deserves to be dismissed.

TRIAL COURT:

8. The learned District Munsif, Puducherry, has framed issues



and additional issues.

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9. The second plaintiff was examined as P.W.1 and Exs.A1 to A29 were marked. One Periyasamy Kounder and one Jaganathaperumal were examined as P.W.2 and P.W.3 respectively. On the side of the defendants, one Karunanidhi was examined as D.W.1 and Exs.B1 to B3 were marked and while cross-examining D.W.1, Ex.A30 was marked by the plaintiffs. One Kesava Perumal and one Karthik were examined as D.W.2 and D.W.3 respectively.

10. After evidence was let in, the Court had re-cast the issues as follows:

“ 1. *Whether the suit property was allotted to the share of Panderi in an oral partition that took place between the said Panderi 1st defendant?*

2. *Whether the plaintiff have absolute title over the suit property?*

3. *Whether the plaintiffs are entitled to the relief of declaration that they are absolute owners of the*



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suit property?

4.Whether the plaintiffs correctly valued the suit?

5.Whether the sale deed dated 17.11.1993 and 11.03.1997 are null and void and not binding upon the plaintiffs?

6.Whether the plaintiffs are entitled to the relief of declaration that sale deeds dated 17.11.1993 and 11.03.1997 are null and void and not binding upon the plaintiffs?

7.Whether the plaintiffs are in possession and enjoyment of the suit property?

8.Whether the plaintiff are entitled to the relief of permanent injunction restraining the defendant from interfering with their possession and enjoyment of suit property?

9.Whether the plaintiffs are entitled to the alternative relief of delivery of possession of suit property?

10.Whether the suit is barred under the law of limitation?

11.To what other relief the plaintiffs are entitled for?”



11. After the issues were recast, parties had endorsed that they have no evidence to lead on these issues. Therefore, the learned District Munsif, dismissed the suit taking note of the admission of P.W.1 that they are aware of the sale deeds that were executed, one sale deed even at the time of executing and other one, a month later. Therefore, the suit for declaration filed in the year 2005 was not maintainable.

12. The plaintiffs challenged this judgment and decree in A.S.No.18 of 2020 on the file of the Additional Sub Court, Puducherry. The learned Judge, by judgment and decree dated 13.12.2022, was pleased to dismiss the appeal against which, the present second appeal is filed.

13. Heard the learned counsel for the appellants.

DISCUSSION:

14. The plaintiffs had originally sought for declaration of their title and permanent injunction, failing which, they had sought for



delivery of possession. The plaintiffs' case is that in the oral partition, the entire property had been allotted to Panderi Gounder as early as in the year 1973. However, no documents have been filed on the side of the plaintiffs to show that they are in possession and enjoyment of the suit property.

15. On the contrary, the defendants' case is that the eastern half share had been allotted to the share of the first defendant measuring an extent of 8 kuzhi and 1 $\frac{3}{4}$ veesam. Thereafter, as early as on 17.11.1993, the first defendant had sold the property to the second defendant who had also put up a construction and obtained electricity connection. Subsequently, the second defendant had sold the property to the third defendant under Ex.A14, dated 11.03.1997.

16. The plaintiff had filed a suit originally for declaration and permanent injunction in O.S.No.1515 of 1996 on the file of the II Additional District Munsif Court, Puducherry and had withdrawn the said suit seeking liberty to file a fresh suit. Even pending the suit in



O.S.No.1515 of 1996, the Advocate Commissioner, who was appointed in the said proceedings, had submitted a report that there was a house constructed upon the suit property. However, no steps were taken to seek recovery of possession or to set aside these sale deeds.

17. The suit was filed for bare injunction in O.S.No.21 of 2000. Thereafter, the plaintiffs had filed I.A.No.2045 of 2002 for amending the prayer to include the relief of declaration in respect of the property. This application was dismissed and the same was challenged before this Court in C.R.P.No.390 of 2003. This Court by an order dated 18.06.2004, while dismissing the revision granted leave to the plaintiffs to amend the prayer to include all reliefs within 2 months. Thereafter, this suit was dismissed as withdrawn giving liberty to the plaintiffs to file a comprehensive suit. Once again the plaintiffs have not initially sought for the relief of setting aside the sale deeds executed by the first defendant in favour of the second defendant and in turn, the second defendant in favour of the third defendant. The plaintiffs had thereafter, taken out an application to amend the plaint which was



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allowed on 17.04.2006.

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18. The instant suit has been filed only on the strength of the order passed by this Court in C.R.P.No.390 of 2003. The order of this Court does not entertain any ambiguity and the plaintiffs were directed to file the suit within two months on or before 18.08.2004 including all reliefs. The relief of setting aside the sale deeds has been sought for beyond this period of two months.

19. Both the Courts below have concurrently held against the plaintiffs since the plaintiffs were not able to establish as to how the property has been allotted to their share and that they are in possession and enjoyment of the suit schedule property. On the contrary, the defendants have proved their possession and enjoyment of the suit schedule property since the year 1993.

20. I see no reason to disagree with the concurrent findings of the Courts below, particularly, when the second appeal does not



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contemplate any questions of law much less a substantial question of law.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Additional Sub Court,
Pudhucherry.
2. The Principal District Munsif,
Pudhucherry.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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