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S.A.No.1076 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1076 of 2022

M.A.Mohamed Ghouse

.. Appellant

Vs.

1. Muthuperumal

2. Amutha

3. Sheik Masthan

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to allow the appeal and set-aside Judgment and Decree dated 27.01.2021 made in A.S.No.44 of 2019 passed by the Learned Subordinate Judge, Chidambaram, confirming the Judgment and Decree dated 18.07.2018 made in O.S.No.42 of 2008 passed by the Learned Principal District Munsif cum Judicial Magistrate, Portonovo.

For Appellant : Mr.S.Sathish Rajan

JUDGMENT

This second appeal has been filed as against the Judgment and Decree dated 27.01.2021 made in A.S.No.44 of 2019 passed by the Learned Subordinate Judge, Chidambaram, confirming the Judgment and Decree dated 18.07.2018 made in O.S.No.42 of 2008 passed by the Learned Principal District Munsif cum Judicial Magistrate, Portonovo, thereby dismissed the suit.



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2. The appellant is the plaintiff and the respondents are the defendants.

The appellant filed a suit in O.S.No.42 of 2008 for declaration and injunction in respect of the suit properties. The case of the plaintiff is that the plaintiff and the first defendant are brothers. The second defendant is the wife of the first defendant. There are other brothers in their family. As per the family arrangements, the plaintiff was allotted 25 cents under the registered sale deed dated 03.07.1990 and the second defendant was gifted with 25 cents by way of a gift deed. During the month of January 2008, the second defendant proposed to sell some portion of the first defendant's property. At that juncture, it was informed by the surveyor that the survey numbers of the properties of the plaintiff and the first defendant are not correct and there are mistakes in survey numbers. Therefore, the plaintiff and the first defendant had realized the mistake in survey numbers and agreed to correct the survey numbers. However, they wanted to sell 9 cents each. The document dated 22.01.2008 was also entered into in writing. However, it was not a registered, due to the plaintiff's health condition. From the date of the sale deed, i.e, 03.07.1990, the plaintiff is in possession and enjoyment of the property.

3. On the other hand, the respondents resisted the same, by way of filing written statement stating that the entire claim of the appellant is deliberately



wrong. The properties comprised in Survey No.93/1, 93/2, 93/3, 93/4 and 93/6A, ad-measuring 25 cents were gifted to the second defendant, who is the vendor of the first respondent herein by the second defendant's brothers including the appellant herein, on 03.07.1996, thereby identified the properties with survey numbers and as such the appellant cannot claim now that he is having 25 cents share as per the boundaries. As per the plaint, the western boundary of S.No.96/6A is not a road and that the mistake would be in plaintiff's sale deed which was marked as Ex.A1 and not in the second defendant's gift deed, which was marked as Ex.B1.

4. On the side of the appellant, he had examined P.Ws.1 to 3 and marked Exs.A1 to 5. On the side of the respondents, they had examined D.Ws.1 and 2 and marked Exs.B1 to 11. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit. Aggrieved by the same, the appellant filed an appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

5. The appellant raised the following substantial questions of law:-,

“ a) Whether the principles of boundaries will prevail over the Survey Numbers is applicable to the facts and circumstances of the subject matter of the suit in O.S.No.42 of 2008 ?



b) Whether the Plaintiff have proved his title and possession over the suit property by way of Revenue Records ?

c) Whether the plaintiff have perfected title to the suit property by way of Adverse Possession ?

d) Whether the possession of the Plaintiff is open, hostile and adverse to the interest of the defendant over the suit property for well over the statutory period ?

e) Whether the Exchange Deed Ex.A2 is a genuine and true document ?

f) Whether the Defendant is estopped from denying the Right, Title and Possession of the Plaintiff in view of Ex.A2 ?”

6. The learned counsel for the appellant would submit that in fact, the second respondent herein categorically admitted that there was mistake in survey numbers. Though, the exchange deed was executed between them, the same was not registered for the reason that the plaintiff had fell ill. In fact, the possession and enjoyment of the suit property is not denied by the respondents herein. The patta in respect of the suit properties stands jointly in the name of the appellant and the respondents. As per the boundaries, the appellant is in possession and enjoyment of the suit property.

7. A perusal of records revealed that the description of the suit properties as per the sale deed dated 03.07.1990 and the description given in the suit are different. According to the appellant, he is in possession and enjoyment of the



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properties ad-measuring 25 cents comprised in S.Nos.93/6A, 93/3, 93/5A and 93/4 out of 48 cents, as per the sale deed dated, dated 03.07.1990, which was marked as Ex.A1. Accordingly, the total land comprised in S.No.93/6A is 48 cents. The respondents had marked Ex.B6, the computerized patta. It revealed that S.No.93/6A ad-measuring 20 ares, which is equivalent to 49 cents and it is owned by five persons, including the appellant herein. The property comprised in S.No.93/3, ad-measuring 2 ares, which is equivalent to 5 cents. Whereas, the property comprised in S.No.93/4 having extent of 1.5 ares, which is equivalent to $3\frac{3}{4}$ cents. Both the measurements are different. Therefore, the property description mentioned in the plaint is completely wrong. The further stand of the appellant is that he had taken an effort to exchange 9 cents of property with the second defendant. If at all the mistake is only with respect to survey numbers, proper course would be to rectify the mistake by way of execution of rectification deed. However, the appellant had executed an exchange deed with the second defendant. It has nothing to do with the suit property. It was not a registered one. The un-registered exchange deed was marked as Ex.A2 and it is an invalid document as contemplated under Section 17 of the Registration Act, 1908.



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8. Therefore, both the Courts below rightly dismissed the suit and this Court finds no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

9. Accordingly, this Second Appeal is dismissed. No costs.

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Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

1. The Subordinate Judge, Chidambaram.
2. The Principal District Munsif cum Judicial Magistrate, Portonovo.

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