



S.A.No.887 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 21.09.2023

Coram :

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Second Appeal No. 887 of 2021
and
C.M.P.Nos.16819 and 16820 of 2021

Rajeswari

.. Appellant

Versus

1.Jayaraman

2.Pasupathi

3.Valliammal

4.Kumaran

5.Velmurugan

6.District Collector,
District Collectorate Office,
Cuddalore.

7.The Revenue Divisional Officer,
Revenue Divisional Office,
Vridhachalam, Vridhachalam Taluk,
Cuddalore.

8.Tahsildar,
Office of Tahsildar,
Vridhachalam Taluk, Vridhachalam.

9.The Village Administrative Officer,
Kottagam Village, Kottagam Post,
Vridhachalam Taluk, Neyveli-02.

.. Respondents



S.A.No.887 of 2021

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 23.12.2020 made in A.S. No.10 of 2011 on the file of Subordinate Judge, Neyveli in confirming the judgment and decree dated 21.03.2011 made in O.S.No.135 of 2008 on the file of District Munsif Court, Neyveli.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.V.Sundarraman for
Mr.G.Vijayakumar for R5

Dr. S. Suriya,
Additional Government Pleader
for R6 to R9

JUDGMENT

The plaintiff, who lost her case before both the Courts below, has filed the present Second Appeal.

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

3. The case of the appellant/plaintiff is that the 'A' schedule property belongs to Deivasigamani Padaiaichi and Karuppayi, who are the father and mother of the plaintiff and defendants 2 and 3 are the sisters of the plaintiff and the 1st defendant is the husband of the 2nd defendant. The plaintiff's father died before 45 years and her mother died in the year 2002 and after demise of



S.A.No.887 of 2021

her mother, the plaintiff and defendants 2 and 3 had partitioned the family properties on 29.12.2003. During the partition 'C' schedule property in Survey Nos.72/1 0.01.0 ares and 72/2 0.00.5 ares, which is suit 'A' schedule property was allotted to the plaintiff. Thereby, 'A' Schedule property devolved on herself and defendants 2 and 3, by way of partition and 'B' schedule property is the property adjacent to the suit 'A' schedule property and the second defendant being eldest in the family, the patta bearing No.243 stood in her name. The said 'B' Schedule property, which is a Government poramboke land, has been enjoyed by the plaintiff and defendants 2 and 3, but the first defendant, who is the husband of the second defendant, had obtained patta in the name his wife, the second defendant herein and later sold the property to defendants 4 and 5 under a sale deed dated 15.12.2008. Therefore, the plaintiff filed the suit seeking for a declaration and permanent injunction with reference 'A' schedule property and for permanent injunction and mandatory injunction in respect of 'A' and 'B' schedule properties directing the eighth defendant to transfer patta in her favour.

4. Defendants 2 and 3 filed written statement contending that they had no objection for decreeing the suit filed by the plaintiff.



S.A.No.887 of 2021

5. The fifth defendant had filed the written statement admitting that the plaintiff had right over the 'A' schedule property, but with reference to the 'B' schedule property in the year 1982 itself patta was granted in the name of the fourth defendant and with his permission, the first defendant had been in enjoyment of the 'B' schedule property and thereby, he had been issued patta on 27.11.1996 by the Revenue Authorities. He would further contend that the first defendant sold the property to fifth defendant under a sale deed dated 15.12.2008 and from then onwards the fifth defendant has been in possession of the 'B' schedule property and patta has also been issued in his favour and the fourth defendant is an unnecessary party to the suit. Since the fifth defendant is in possession of the suit 'B' schedule property and the same is not in enjoyment of the plaintiff, the relief sought for by the plaintiff in respect 'B' schedule property has to be dismissed.

6. The fourth defendant had adopted the written statement filed by the fifth defendant.

7. On the above pleadings, the trial Court had raised six issues. Issue Nos.2 and 4 are related to 'B' schedule property. The plaintiff examined himself as PW1 and one Thirumal, the Ex-Panchayat President, was examined



S.A.No.887 of 2021

as PW2 and marked Exs.A1 and A2 in support of his case. On the side of the defendants, the fifth defendant was examined as DW1 and first defendant was examined as DW2 and Exs.B1 to B3 were marked.

8. The trial Court considering oral and documentary evidence, while dismissing the suit in respect of 'B' schedule property and declining to grant mandatory injunction in respect of 'A' schedule property, decreed the suit granting a declaration that 'A' schedule property belongs to the plaintiff and permanent injunction in respect of 'A' schedule property.

9. Questioning the rejection of permanent injunction and mandatory injunction in respect of 'B' schedule property, the plaintiff has filed A.S.No.10 of 2011. The Sub Judge, Neyveli, by judgment dated 27.11.2012, while confirming the finding rendered by the trial Court in respect of 'A' schedule property allowed the appeal and held that the plaintiff is entitled for permanent injunction and mandatory injunction in respect of 'B' schedule property and directed the plaintiff to take steps to transfer the patta in her name in respect of 'A' and 'B' schedule properties.

10. Challenging the same, defendants 1, 4 and 5 have filed S.A.No.13 of 2013 before this Court. This Court, by judgment dated 14.06.2019, allowed



S.A.No.887 of 2021

WEB COPY

the Second Appeal and remitted the matter back to the Sub Court, Neyveli, permitting the parties to let in evidence only with reference to the documents that have been filed before the Appellate Court and also directed the Appellate Court to conclude the said exercise within a period of two months from the date of receipt of a copy of the Judgment.

11. After remand, considering the oral and documentary evidence, the Appellate Court has framed the following issues for determination.

- (1) Whether the plaintiff is correct to claim that her family members were in possession of the 'B' schedule property for the past 70 years?
- (2) Whether the plaintiff is in possession and enjoyment of the suit 'B' schedule property?
- (3) Whether the plaintiff is entitled to the relief of mandatory injunction in respect of suit 'B' schedule property?
- (4) Whether the appeal has to be allowed as stated by the appellant/plaintiff?
- (5) To what other relief the appellant is entitled to?



S.A.No.887 of 2021

12. During the re-hearing of the appeal, the plaintiff has marked additional documents Exs.A3 to A6 and has also given additional evidence.

After cross-examination of P.W.1 and the documents marked, the appellate Court has held that the plaintiff has not established the existence of the legitimate right in possession of the 'B' schedule property and confirmed the finding rendered by the trial court and dismissed the appeal.

13. Questioning the correctness of the judgment and decree made by both the Courts below, the appellant/plaintiff has filed the present second appeal.

14. Learned counsel appearing for the appellant/plaintiff would submit that both the Courts below erred in rendering a wrong finding that the plaintiff was not in possession of the suit 'B' schedule property, whereas the Appellate Court on remand had not properly considered the documents despite the examination of the Panchayat President, who had deposed about the water tax receipts. He would further submit that the appellate court has failed to appreciate the relinquishment deed - Ex.A4, which was rejected on the ground of non-registration. The learned counsel would further submit that both the courts have failed to appreciate the possession of the appellant and seek to allow the appeal.



S.A.No.887 of 2021

15. Per contra, learned counsel for the fifth respondent/fifth defendant would submit that when the defendants have not been given an opportunity to cross-examine the plaintiff on the documents that have been filed before the Appellate Court, this Court is correct in remanding the appeal in S.A.No.13 of 2013 back to the Sub Court, Neyveli, for permitting the parties to let in evidence only with reference to the documents that have been filed before the Appellate Court. He would further submit that the appellate Court is correct in dismissing the appeal holding that the plaintiff has not established the existence of the legitimate right in possession of the 'B' schedule property and correctly confirmed the finding rendered by the trial Court. He would further submit that though the plaintiff has deposed that for the past 70 years 'B' schedule property is in enjoyment of the plaintiff's family, no steps have been taken to appoint an Advocate Commissioner to identify the property in question and Ex.A4–Relinquishment Deed is also not a registered document and hence, both the Courts have correctly dismissed the claim of the plaintiff and no substantial question of law involved in this appeal and prayed for dismissal of the appeal.

16. Dr. S. Suriya, learned Additional Government Pleader appearing for Respondents 6 to 9, would submit that the plaintiff ought not to have



S.A.No.887 of 2021

impleaded the revenue authorities viz., defendants 6 to 9 as parties to the suit as those defendants are not proper and necessary parties for adjudication of the *inter se* dispute between the plaintiff and the first defendant. She would further submit that the Plaintiff also has not sought for any relief as against these defendants in the plaint and thereby, she prayed for dismissal of the appeal insofar as Respondents 6 to 9 are concerned.

17. Heard the learned counsel appearing for the parties and perused the judgments of the courts below in the light of the question of law raised by the Appellant.

18. There are two properties involved in this case viz., 'A' and 'B' schedule properties. In respect of 'A' schedule property, there is no dispute between the parties. For documentary proof, the plaintiff had filed original partition deed dated 29.12.2003 as Ex.A1 and patta in respect of 'A' schedule property as Ex.A2. The trial Court, on scrutiny of the oral and documentary evidence and also the admission made by defendants 2 to 5 in their written statements that the plaintiff had right over the 'A' schedule property and she is in enjoyment of the same, had rightly held that 'A' schedule property belongs to the plaintiff and she is entitled for declaration and permanent injunction in



S.A.No.887 of 2021

respect of 'A' schedule property and dismissed the claim of mandatory injunction in respect of 'A' schedule property.

19. The only issue for consideration in the present appeal is with reference to B-Schedule property. The 'B' Schedule property is a Government Poramboke land which has been enjoyed by the plaintiff and defendants 2 and 3. The trial Court had raised issue Nos.2 and 4 which related to the B-Schedule property. In respect of 'B' schedule property though the plaintiff deposed that for the past 70 years 'B' schedule property is in enjoyment of the plaintiff's family, no document was filed to prove the same and also no steps have been taken to seek for appointment of an Advocate Commissioner to identify the property in question. On the side of defendants 4 and 5, they have filed Ex.B2- patta, dated 27.11.1996, which was issued in favour of the first defendant and in turn, the first defendant sold the same to the fifth defendant on 15.10.2008 and for the proof of the same Ex.B1 – Sale deed was marked. Thereafter, the fifth defendant is in possession of the property in question and patta has also been transferred to the fifth defendant's name and the same was marked as Ex.B3. The trial Court, considering the evidence adduced and the documents marked on the side of the defendants and the fact that the plaintiff has not filed any valid document to prove that 'B' schedule property was in her



S.A.No.887 of 2021

possession and enjoyment, has rightly rejected the claim of the plaintiff seeking permanent injunction and mandatory injunction in respect of 'B' schedule property.

20. The plaintiff, along with the first appeal, had also filed I.A.No.36 of 2012 for receiving additional documents under Order XLI Rule XXVII of the Code of Civil Procedure. The documents were taken on file and marked as Exs.A.3 to Ex.A.6. Ex.A3 are the water tax receipts; Ex.A4 is the relinquishment deed, by which right of enjoyment in 'B' schedule property has been assigned to the plaintiff by defendants 2 and 3, the sisters of the plaintiff. Exs.A5 and A6 are the original FMB sketch for 'A' and 'B' schedule properties. Though defendants 2 and 3 had relinquished their right to the plaintiff for enjoyment of the 'B' schedule property, Ex.A4 Relinquishment Deed was not registered under the Transfer of Property Act or Section 17 of the Registration Act. The first defendant is none other than the brother-in-law of the plaintiff and that he is in possession and enjoyment of the 'B' schedule property for over 26 years and patta has also been issued for the said land in Survey No.172/21 by the Revenue Authorities on 27.11.1996. It is the further case of the defendants that the first defendant had sold the property by a registered sale deed and handed over the possession to the fifth defendant and patta has



S.A.No.887 of 2021

also been issued through Ex.B3. Though these documents were marked at the appellate Stage, there is no pleading in respect of these documents in the plaint itself. If the plaintiff had these documents at the time of filing the suit, he ought to have pleaded the said contentions in the plaint itself. Following the decision of the Apex Court and considering the oral and documentary evidence and though the first appellate Court reversed the finding of the trial court, as per direction of this Court in S.A.No.13 of 2013, the second appellate Court and having cross examined P.W.1 and considered the additional documents filed, by judgment dated 23.12.2020, rightly rejected the claim of the plaintiff.

21. Having carefully analysed the materials available on record including the judgments of both the Courts, this Court is of the view that the Courts below have dismissed the suit on law and facts. This Court finds that there is no question of law much less substantial question of law involved in the appeal requiring admission.

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



S.A.No.887 of 2021

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 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 question of law arises for consideration, the Second Appeal fails and the same is dismissed at the



S.A.No.887 of 2021

admission stage itself. No costs. Consequently, connected Miscellaneous

Petitions are closed.

21.09.2023

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To

- 1.The District Munsif-cum-Judicial Magistrate,
Neyveli.
- 2.The Subordinate Judge, Neyveli.
- 3.The Record Keeper,
V.R.Section, High Court, Madras.



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S.A.No.887 of 2021

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S.A.No.887 of 2021

21.09.2023