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S.A.No.295 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

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

S.A.No.295 of 2023
and C.M.P.No.8702 of 2023

1. R.Sakthivel

2. Sundhari

3. S.Adhithacholan

... Appellants

Vs.

Thenmozhi

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree dated 01.08.2019 passed in A.S.No.13 of 2017 on the file of the Sub Court, Uthangarai, thereby, confirming the Judgment and Decree in O.S.No.73 of 2014 dated 13.07.2017 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

For Appellants : No Appearance

For Respondent : Mr.V.Nicholas



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JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the learned Sub Judge, Uthangarai, in A.S.No.13 of 2017 dated 01.08.2019, confirming the Judgment and Decree passed by the learned District Munsif cum Judicial Magistrate, Uthangarai in O.S.No.73 of 2014 dated 13.07.2017.

2. The appellants are the defendants before the trial Court and the respondent is the plaintiff, who had filed an original Suit seeking for declaration of title, permanent injunction to restrain the appellants/defendants from interfering with her peaceful possession and enjoyment of the suit properties. The suit was decreed in favour of the respondent/plaintiff, as against which, the appellants have filed the first appeal.

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

4. The crux of the plaint averments as follows:

4.1. The subject matter of the suit is in respect of the three items of



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immovable properties situated within Reddipatti Village, Uthangarai Taluk.

The 1st item of the suit A schedule property is a Punja land with an extent of 28.50 cents comprised in S.F.No.205/1A1A, the 2nd item of the suit property is Punja land with an extent of 0.09 cents comprised in S.F.No.206/2G2A and the 3rd item is a punja land with an extent of 0.05.0 cents comprised in S.F.No.206/2G2C. Item 2 in the 2nd schedule is a tamarind tree situated in S.R.No.197 in Reddipatti Village, Uthangarai Taluk. The plaintiff claimed that she is the absolute owner of the "A" schedule property and the suit schedule properties belong to her vide various sale deeds. She had stated that 1st item of "A" schedule property was originally owned by one Chinnammal @ Maniyammal, wife of Vadimoopar and the first defendant and they have sold an extent of 0.78 cents out of Acre 1.93 cents in S.F.No.205/2A1A with specific four boundaries to one Thanikachalam on 03.12.1997 and in the same sale deed, the above said persons have sold 0.37 cents in S.F.No.206/2 in the same village in favour of Thanikachalam. Later, the said Thanikachalam had sold the purchased properties to one Karthikeyan S/o.Govindaraj on 16.03.2011 and thereafter, the said Karthikeyan had sold the properties to one Deivanai on 10.10.2011 and in turn the said Karthikeyan, had also sold 0.4 ½ cents in S.F.No.206/2G on 30.01.2013 in



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favour of the plaintiff. One Sekar, husband of the plaintiff had sold the 0.70 cents in S.F.No.205/1A in favour of the 3rd defendant on 21.06.2010. Later, the 3rd defendant in turn had re conveyed the 0.70 cents in favour of the plaintiff on 27.08.2008 for valuable consideration. On 27.08.2008, the 1st defendant had sold part of his property to an extent of 0.10 cents in S.F.No.206/2G2 in favour of the plaintiff and likewise, the husband of the plaintiff has settled his share in S.F.No.206/2G to an extent of 0.5 cents in favour of the plaintiff. Accordingly, the plaintiff is in possession and enjoyment of the "A" schedule properties.

4.2. The "B" schedule property is a tamarind tree grown on the poromboke land located at S.F.No.197 in the same village. The name of the plaintiff has been registered in the revenue records and she had been paying tax to the revenue authorities and cultivating tamarind trees. Since, the defendants interfered with the plaintiff's peaceful possession and enjoyment of the suit properties, the plaintiff had filed the suit for declaration of title and permanent injunction.

5. The defendants 1 and 3 had filed the written statements denying



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the case of the plaintiff. The crux of the averments in the written statement is that the husband of the plaintiff and the first defendant are brothers. The second defendant and the plaintiff are sisters. The defendants have denied the contents of the plaint and also stated that the produce from the tamarind tree located in poromboke land in S.FNo.197 in the village was shared by the plaintiff and the defendants. The documents were executed only as security for the borrowed money and that the defendants were in possession of suit properties and suppressing all the facts, the plaintiff has filed the suit and thereby, sought for dismissal of the suit.

6. The trial Court has framed the following issues.

1. Whether the suit 1st item of the suit property belongs to the plaintiff is true ?
2. Whether the suit properties are in possession of the plaintiff is true ?
3. Whether the plaintiff have name transferred tax assessments in respect of the 2nd item of the suit property is true?
4. Whether the plaintiff is entitled to costs?
5. Whether the plaintiff is entitled for the the relief of declaration as prayed for?



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6. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

7. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and through her Ex.A1 to Ex.A21 were marked. On the side of the defendants, DW1 to DW3 were examined and Ex.B1 and Ex.B2 were marked.

8. After a full fledged trial, the trial Court decreed the suit as prayed for by the plaintiff, against which the defendants have filed the appeal in A.S.No.13 of 2017 on the file of the Sub Court, Uthangarai.

9. The first appellate Court had framed the following points for determination.

1. Whether the plaintiff has proved the title to the suit "A" schedule property?
2. Whether the plaintiff is in possession and enjoyment of the suit A schedule property?
3. Whether the trial Court finding regarding title in respect of the 1st item of the suit property is correct?



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4. Whether the plaintiff is entitled to the relief of the permanent injunction in respect of the 2nd item of the suit property?
5. Whether this appeal is liable to be allowed or not?
6. To what other relief is entitled to the plaintiff?

10. During the appeal, the appellants/defendants also filed a petition in I.A.No.32 of 2018 to receive additional documentary evidence and it was heard along with appeal. The first appellate Court found that the document No.1 is a tax receipt which is subsequent to institution of the suit and document No.2 is the patta relating to S.F.No.205/4 and 205/5. The first appellate Court finding that one document was hit under lis pendens and another one was unrelated to the suit and also finding that the plaintiff had proved her possession, had rejected the petition holding that the documents have been created for the purpose of the case and concurred with the finding of the trial Court and dismissed the appeal. The appellate Court had also held that the plaintiff was paying tax and collecting yields of the tamarind tree and rejected the claim of the defendants that they were not in joint possession and dismissed the appeal. Aggrieved against the concurrent findings of the Courts below, the present second appeal has been filed.



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11. Heard, perused the judgments of the Courts below and also the grounds raised by the appellants.

12. The Suit is filed for declaration and permanent injunction. According to the plaintiff, she is the owner in possession of the schedule "A" properties and solely cultivating the tamarind tree in S.F.No.197. To prove her case, she has marked the sale deeds and patta in respect of the properties owned by her. The patta reflects that the suit property is under possession of the plaintiff and as per the sale deeds, the defendants have knowingly sold their interest in the suit properties by various registered sale deeds in favour of the plaintiff. Though the defendants have denied the title of the plaintiff and took a stand that the sale deeds have been executed for sham and nominal purposes, they have not offered any explanation as to why those sham and nominal documents were executed in favour of the plaintiff and her husband. Further, the Courts below have found that though the suit has been filed in the year 2014, the defendants have not taken any legal steps to set aside the sale deeds, which according to them were sham and nominal documents. Thus, the Courts below have concluded that the plaintiff had



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proved her case and made out the case for grant of declaration of title and permanent injunction. Further, the plaintiff has also marked Ex.A11(Kist receipts in the name of the plaintiff) to show that she was in possession and enjoyment of the tamarind tree situated in S.F.No.207, Reddipatti Village, which of course is a poromboke land. Later, the first appellate Court on finding that one of the additional documents filed by the defendants was hit under lis pendens and another one was unrelated to the suit, had refused to accept the additional documents.

13. As rightly observed by the Courts below, the plaintiff has proved her possession by examining herself and by marking Exhibts A1 to A21.

14. Therefore, it is clear that on re-appreciating the entire oral and documentary evidence, the first appellate Court had concurred with the findings of the Trial Court both on facts and in law and rightly appreciated and confirmed the judgment and decree of the Trial Court granting the relief of declaration of title and permanent injunction.

15. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view



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that no substantial question of law is involved to admit this second appeal.

16. 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 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



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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."

17. In view of the above, when no question of law much less substantial question of law arises for consideration, the Second Appeal fails and the same is dismissed at the admission stage itself, by confirming the concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The Sub Court, Uthangarai.
2. The District Munsif cum Judicial Magistrate, Uthangarai.
3. The Section Officer, VR Section, High Court of Madras.

A.D.JAGADISH CHANDIRA.,J.

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