



S.A.No.634 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

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

S.A.No.634 of 2023
and
C.M.P.No.19996 of 2023

D.Nagappan

... Appellant

Vs.

1. V.Dhanalakshmi

2. V.Murugan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleased to set aside the Judgement and Decree dated 21.04.2022 made in A.S.No.23 of 2018 on the file of learned II Additional Subordinate Judge, Villupuram, reversing the Judgement and Decree dated 04.11.2017 made in O.S. No.278 of 2012 on the file of the Additional District Munsif Court, Villupuram District.

For Appellant : Mr.L.P.Balajiram

For Respondents : M/s.C.Prabakaran



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JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree passed by the learned II Additional Subordinate Judge, Villupuram, in A.S.No.23 of 2018 dated 21.04.2022, reversing the Judgment and Decree passed by the Additional District Munsif Court, Villupuram, in O.S.No.278 of 2012 dated 04.11.2017.

2. The appellant is the plaintiff and respondents are the defendants. The appellant/plaintiff filed the Suit seeking a declaration of his title to the suit properties and permanent injunction. The suit was decreed in favour of the appellant/plaintiff and it was set aside by the first appellate Court. Aggrieved over the same, the appellant/plaintiff has filed this present Second 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 is as follows:-

4.1. Some of the suit item of properties were purchased by the



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petitioner's father Duraisamy from one Manangatti vagaira in the name of Minor plaintiff on 14.08.1986. After the plaintiff attained majority, his father delivered the suit properties to the plaintiff. The father of plaintiff died on 21.02.1995 leaving behind the plaintiff and his brothers namely Murugan @ Iyyappan, Ponurangam and his wife Anjalai as his legal heirs.

4.2. The plaintiff, his brothers and mother were living as joint family and out of joint family property income, they have purchased some of the properties and have executed a registered partition deed on 05.08.2008 and they have divided the joint family properties. As per the partition deed, the 'B' Scheduled properties were allotted to the share of plaintiff and the same are the suit properties. The patta in respect of the suit properties stands in the name of plaintiff and he is in enjoyment of the same and also paid kist for the properties of his share.

4.3. Whiles, even though the defendants have no right or title, possession and enjoyment of the suit properties at any point of time, they have denied the title of plaintiff in the village during the 3rd week of August 2012 and they attempted to restrain the possession of the plaintiff. Hence, the plaintiff filed the suit seeking a declaration of his title and permanent injunction.



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5. The 1st defendant has filed the written statement and it was also adopted by the 2nd defendant, the crux of which is as under :-

5.1. An oral partition has taken place in the year of 1970 between the sons of one Duraisamy of Kottiyampoondy village, after his demise and thereby, the suit 2nd item and some other properties were allotted to the share of one Veerabathiran/husband of the 1st defendant.

5.2. The said Veerabathiran gifted the said properties along with the property of 0.15 cents comprising in S.No.273/8 belonged to his Sister namely Anjalai wife of Gopal Gounder at the time of 2nd marriage on 31.01.1875 to the 1st defendant and the 1st defendant is in possession and enjoyment of those properties as absolute owner.

5.3. Further, the first wife's daughter of the said Veerabathiran had also sold 0.2 cents in the suit 1st item and 0.8 cents out of 0.25 cents in the suit 2nd item and some other properties to the 1st defendant for a valid consideration and thereby, the 1st defendant, being owner, has been enjoying the entire properties including the 0.23 cents from the aforesaid date of settlement and sale deed.

5.4. On 14.08.1986, when the father of plaintiff namely Duraisamy purchased the adjacent properties of suit properties comprising in



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S.No.273/6, 10, 11 in the name of plaintiff from Manangatti Vagaira, the said Vendors were not having any right and title to the said properties at any point of time and they created false sale deed comprising the 0.2 cents in suit 1st items and 0.12 cents comprising suit 2nd items belonged to the 1st defendant, but the plaintiff filed the suit for entire extent and the said sale deed is incorrect, wrong and invalid in respect of suit properties and the said sale deed.

5.5. Only after filing of the suit the 1st defendant came to know that the plaintiff has obtained a false patta for the suit properties. The plaintiff or his predecessor in title had no title and possession in respect of the 0.2 cents out of 0.21 cents in the suit 1st item and the entire extent of suit 2nd item at any point of time and thereby, the suit is liable to be dismissed.

6. The trial Court originally framed the following issues on the basis of the pleadings:-

1. Whether the plaintiff is entitled for permanent injunction in the suit property as prayed for?
2. To what other reliefs the plaintiff is entitled to?

Later, on 28.04.2017, the trial Court had reframed the issues as under:-



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1. Whether the plaintiff is entitled to get the relief declaration of title and consequential permanent injunction as prayed for?
2. To what other reliefs the plaintiff is entitled to?

7. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and through him, Ex.A1 to Ex.A7 were marked. On the side of the defendants, DW1 and DW2 were examined and Ex.B1 to B4 were marked.

8. The trial Court, after considering the oral and documentary evidence, found that the plaintiff has not proved his case by filing necessary documents to prove that he is entitled to declaration and permanent injunction and that the boundaries of the properties were not properly mentioned in the schedule, however, granted declaration and permanent injunction vide Ex.A1 only in respect of 0.07 cents out of 0.21 cents in the suit 1st item in S.No.149/3 and 0.12 ½ cents out of 0.25 cents in the suit 2nd item in S.No.273/12 as the properties belong to the plaintiff, by judgment and decree dated 04.11.2017, Aggrieved against the same, defendants have preferred the first appeal in A.S.No.23 of 2018, before the II Additional



9. The defendants have filed the appeal contending that the trial Court has failed to look into the documents filed on the side of the defendants and it ought not to have believed the evidence of PW1 alone and it erred in ignoring the fact that the plaintiff has neither proved the title nor the possession in respect of the suit property and hence, the Judgment and Decree passed by the trial Court is liable to be set aside.

10. Based on the grounds of Appeal, the first appellate Court framed the following points for determination:-

1. Whether the lower court erred in declare that 0.07 out of 0.21 in suit 1st item S.No.149/3 and 0.12 1/2 out of 0.25 in suit 2nd item S.No.273/12 are belonged to the plaintiff when the plaintiff failed to prove that the entire extent of suit items S.No.149/3 and S.No.273/12 belonged to Manangatti Vagaira/Vendor of Plaintiff?
2. Whether the lower court erred in declare that 0.07 out of 0.21 in suit 1st item S.No.149/3 and 0.12 1/2 out of 0.25 in suit 2nd item S.No.273/12 are belonged to the plaintiff when the PW1/Plaintiff admitted in cross examination as



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that he filed the suit for 0.12 cents alone in the suit 2nd item S.No.273/12 and and he has not filed any document for the said 0.12 ½ cents and there is no boundary for the 0.12 1/2 cents in S.No.273/12 mentioned in the Ex.A1 Sale Deed ?

3. Whether the lower court erred in declare that 0.07 out of 0.21 in suit 1st item S.No.149/3 and 0.12 1/2 out of 0.25 in suit 2nd item S.No.273/12 are belonged to the plaintiff when the Ex.A3 Patta is not a document of title and the Ex.A1, Ex.A2 are not in conform with the Ex.A3 Patta ?
4. Whether the lower court erred in declare that 0.07 out of 0.21 in suit 1st item S.No.149/3 and 0.12 1/2 out of 0.25 in suit 2nd item S.No.273/12 are belonged to the plaintiff when the plaintiff failed to prove his clear title over the suit properties and he failed to prove his possession over the said properties through proper documents ?
5. Whether the appeal is liable to be allowed or not ?

11. The first appellate Court finding that the plaintiff had not fixed the suit 1st item of property on ground by correlating Ex.A1 and Ex.A2 and also had miserably failed to prove his clear title over the suit 1st item of the property item 1, had held that the suit is liable to be dismissed and had allowed the appeal and set aside the judgment and decree passed by the trial



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Court in O.S. No.278 of 2012 dated 04.11.2017. Aggrieved against the same, the present Second Appeal has been filed.

12. Learned counsel for the appellant/plaintiff submitted that the first appellate Court had not relied upon Ex.A2 and Ex.A3. He further submitted that Ex.A2 is a partition deed between the appellant/plaintiff, his brothers and his mother, which should reveal that the appellant/plaintiff was in possession of the property. Further, ExA3/patta dated 06.08.2012 was also not considered by the first appellate Court. Further, the revenue records Ex.A4 and Ex.A5 would also show that the appellant/plaintiff was in possession of the properties.

13. Learned counsel for the respondents/defendants submitted that the documents filed by the respondents is earlier to the documents filed by the appellant/plaintiff. Admittedly in Ex.A1, the boundaries of 0.07 cents comprising in suit 1st item S.No.149/3 is mentioned, whereas, the plaintiff has filed the suit for entire extent of 08.50 ares in the suit 1st item S.No.149/3 without any boundary. Further, the plaintiff has not filed any proof of title to the entire extent of suit 1st item S.No.149/3 as it is belonged to said



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Manangatti Vagaira, from whom the plaintiff had purchased the suit property.

14. He further submitted that in the Ex.A2 Partition deed the 1/3 share of 0.08.5 ares in suit 1st item S.No.149/3 is allotted to the plaintiff through B Schedule of Ex.A2, whereas, the plaintiff has not filed any proof of title to show that the entire extent comprised in suit 1st item S.No.149/3 belongs to the family of plaintiff. Further, Ex.A1 and Ex.A2 not correlate with regard to the boundary and extent and thereby, the first appellate Court found that the plaintiff had miserably failed to prove his clear title to the suit 1st item of property. He further submitted that based on the Ex.A1 and Ex.A2, the trial Court had also found that the plaintiff is not entitled for declaration for the entire property. Such being the case, the first appellate Court had rightly rejected the first appeal. He also submitted that no substantial question of law is involved for admitting the appeal.

15. Hearing the learned counsel appearing for both the appellant and the respondents, perused the judgments of the Courts below and also the grounds raised by the appellant, this Court is able to find that though the trial



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Court has observed that the plaintiff has not proved his title to the entire suit properties and there is no correlation of survey numbers in the documents relied by the plaintiff himself, it had decreed the suit in respect of some items of the suit properties and the first appellate court, on analysing both oral and documentary evidence and the admission made by the plaintiff during the cross-examination with regard to his non-filing of any document to prove his title to the entire suit properties, had set aside the judgment and decree passed by the Trial Court.

16. The first appellate Court has specifically found that the plaintiff has not filed any document to prove his title to the entire suit properties or it belonged to his vendor one Manangatti Vagaira. It appears that the plaintiff had admitted during the cross examination that he had not produced any document to prove the title of his vendor Mannangatti Vagaira also and there is no mentioning of proper boundaries in Ex.A1. It has also found that Ex.A3 Patta relied by the plaintiff is not a document of title and Exs.A1 and Ex.A2 are not in conformity with Ex.A3 Patta and that Ex.A3 Patta is not supported by any proper document of title to prove the clear title of plaintiff to the suit properties. The first appellate court has also analysed the Tax Receipts,



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Exs.A4 and A5 produced by the plaintiff and found that they do not relate to the property covered by Ex.A3 patta and those Receipts relate to some other Fasli.

17. Therefore, it is clear that the first appellate court, having thoroughly analysed the documents produced by the plaintiff and the admission made by the plaintiff with regard to his non production of any relevant document, has specifically found that the plaintiff has miserably failed to prove his title to the entire suit property and thus, the Trial Court has erred in decreeing the suit in respect of some items of the suit properties.

18. This Court, having carefully analysed the materials available on record including the judgments of both the Courts below, does not find any infirmity in the judgment rendered by the first appellate Court and there is no illegality or perversity in its findings. Thus, no substantial question of law is involved to admit this second appeal.

19. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs***



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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 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



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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."

20. In the light of the above decision, sans any substantial question of law, the Second Appeal fails and the same is dismissed at the admission stage itself, confirming the finding rendered by the first Appellate Court. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.09.2023

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The II Additional Subordinate Court, Villupuram.
2. The Additional District Munsif Court, Villupuram District.
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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