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S.A.No.153 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.153 of 2017

and

C.M.P.No.3204 of 2017

Chinnusamy Gounder (Died)

... 1st Appellant

C.Ganesan

... 2nd Appellant

VS.

1.Jayakumar

2.C.Rathinam

3.C.Duraisamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 11.08.2015 made in A.S.No.33 of 2013 on the file of Subordinate Judges Court at Namakkal confirming the judgment and decree dated 12.08.2011 made in O.S.No.1140 of 2004 on the file of Additional District Munsif Court at Namakkal.

For Appellant : Mr.T.L.Thirumalaisamy
for M/s.Venkatasamy Babu



WEB COPY



S.A.No.153 of 2017

For R1

: Mr.J.Hariharan
for M/s.K.V.Law Firm

JUDGEMENT

The 1st respondent herein filed a suit for mandatory injunction seeking direction to the original defendant to restore the superstructure demolished by him and also for permanent injunction restraining the defendant from interfering with his possession. Subsequently, the 1st respondent amended the prayer seeking inclusion of declaration of title. When the suit was taken up for hearing, the 1st respondent not pressed his prayer in respect of mandatory injunction. The suit was decreed in respect of declaration and permanent injunction. Aggrieved by the same, the original defendant in the suit filed an appeal in A.S.No.33 of 2013. Pending first appeal, the original defendant Chinnusamy Gounder died and his legal representatives were brought on record as 2nd appellant and respondents 2 and 3. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the 2nd appellant before First Appellate Court has come up with this second appeal. The other legal representatives of deceased original defendant are shown as



S.A.No.153 of 2017

respondents 2 and 3.

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2. According to the 1st respondent/plaintiff, the suit property was purchased by his father, Muthusamy Gounder under registered Sale Deed/Ex.A1 dated 13.11.1972. After the death of his father, the suit property devolved on 1st respondent, his mother namely Salammal and his sisters namely Kalaiselvi and Selvi. It was averred by the 1st respondent that his sisters got married and they are living separately along with their husband. The mother of 1st respondent executed a release deed in favour of the 1st respondent on 12.05.2004. From that date onwards, the 1st respondent has been enjoying the suit property as full owner. The original defendant in the suit namely Chinnusamy Gounder under whom the appellant is claiming right without having any manner of right trespassed into the suit property and demolished the superstructure stood in the suit property. Therefore, the 1st respondent was constrained to file a suit for mandatory injunction and permanent injunction initially and the same was subsequently, amended by adding a prayer for declaration.

3. The original defendant-Chinnusamy Gounder filed a written



S.A.No.153 of 2017

statement denying the title and possession of the plaintiff. It was averred by the original defendant that he owned properties on the northern and western sides of the suit property and the plaintiff by giving wrong description of the suit property making attempt to lay claim over the property belonged to him. The original defendant also denied the averment found in the plaint as if, he entered the suit property and demolished the superstructure belongs to the plaintiff.

4. Before the Trial Court, the 1st respondent was examined as PW.1 and an independent witness was examined as PW.2. The Village Administrative Officer was examined as PW.3. On behalf of the 1st respondent/plaintiff, 18 documents were marked as Exs.A1 to A18. On behalf of the defendant, no witness was examined and 2 documents namely the judgment and decree passed in earlier suit in O.S.No.1017 of 2004 were marked as Exs.B1 and B2.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the 1st respondent/plaintiff proved his right and possession over the suit property and consequently,



S.A.No.153 of 2017

granted a decree for declaration and permanent injunction. As mentioned earlier, the prayer for mandatory injunction was not pressed by the 1st respondent at the time of argument. Aggrieved by the said judgment and decree, the original defendant-Chinnusamy Gounder filed first appeal in A.S.No.33 of 2013 on the file of the Sub Court, Namakkal. Pending first appeal, the said Chinnusamy Gounder died and hence, the appellant and respondents 2 and 3 were brought on record as his legal representatives. The First Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the 2nd appellant before the First Appellate Court has come by way of this second appeal.

6. After hearing the submissions of learned counsel appearing for the appellant, this Court formulated the following substantial question of law arising for consideration in this second appeal:-

“Whether the relief of declaration sought for by 1st respondent/plaintiff is maintainable in the absence of any document executed by his sisters releasing their shares in the suit property?”

7. Both the learned counsel appearing for the appellant and 1st



S.A.No.153 of 2017

respondent advanced arguments on the above said question of law.

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8. The learned counsel appearing for the appellant submitted that even as per the pleadings, the suit property was purchased by father of the 1st respondent namely Muthusamy Gounder and he died intestate. After the death of his father, the suit property devolved on 1st respondent, his mother and his two sisters. The plaintiff in his plaint pleaded that his mother executed a release deed in his favour on 12.05.2004. However, with regard to the share of his sisters, there was no plea raised by the plaintiff except by saying that they were residing some other place along with their husband. Therefore, the declaration sought for by the 1st respondent/plaintiff cannot be granted in the absence of any legally acceptable documents executed by the sisters of the 1st respondent releasing their shares. The learned counsel further submitted that the evidence let in by the 1st respondent clearly proved on the date of filing of the suit, the 1st respondent's family had right over only half share in the suit property and the other half share was purchased by the 1st respondent under Ex.A13 subsequent to the suit. The learned counsel further submitted that both the Courts below by relying on the documents, which came into existence subsequent to the suit ought not



S.A.No.153 of 2017

to have granted declaration in favour of the 1st respondent.

WEB COPY

9. The learned counsel appearing for the 1st respondent submitted that the sisters of the 1st respondent got married long back and they are living separately along with their husband, without laying any claim over the suit property. Therefore, after release of share by mother of 1st respondent, he is entitled to entire suit property. The learned counsel further submitted that the Court can always taken into consideration the subsequent events and mould the relief. In the case on hand, though at the time of filing of the suit, the 1st respondent's family had only half share in the suit property. When the suit was pending, the remaining half share was purchased by the 1st respondent under Ex.A13. Therefore, both the Courts below rightly by taking into consideration the subsequent events granted a decree for declaration in favour of the 1st respondent.

10. As per the pleadings of the 1st respondent in the plaint, the suit property was originally purchased by Muthusamy Gounder under Ex.A1. Both the Courts below by referring to the recitals and description of the property found in Ex.A1 came to the conclusion that Muthusamy Gounder



S.A.No.153 of 2017

purchased only half share in the property in S.No.100/12B. However, by taking into consideration the release deed executed by mother of the 1st respondent and subsequent purchase by 1st respondent under Ex.A13, came to the conclusion that the 1st respondent was entitled to declaration of title. Though the 1st respondent's family did not possess the title to the entire suit property on the date of filing of the suit. As seen from Ex.A13, the remaining half share of the suit property was purchased by the 1st respondent on 04.03.2011, pending suit. It is always open to the Court to take into consideration the subsequent events and grant appropriate relief. Therefore, there is nothing wrong in the Courts below relying on Ex.A13 and coming to the conclusion that the other half share was purchased by the 1st respondent. However, as far as half share purchased by the father of the 1st respondent is concerned, admittedly, father of the 1st respondent namely Muthusamy Gounder died intestate. On his death, his half share in the suit property covered by Ex.A1 devolved on 1st respondent, his mother and two sisters.

11. The mother of 1st respondent executed a release deed dated



S.A.No.153 of 2017

12.05.2004 under Ex.A2 releasing her share in favour of the 1st respondent.

However, the 1st respondent failed to produce any document to show that his sisters released their respective shares in his favour. In the plaint averment, it was stated by the 1st respondent that his sisters were living separately along with their husband. The said statement will not confer any title to the property, unless the 1st respondent is able to show that he has got valid release deed from his sisters. In fact, the 1st respondent pleads ouster and in such circumstances, it is for him to implead his sisters and seek declaration. Therefore, in the absence of 1st respondent's sisters and also any acceptable evidence to show that the 1st respondent acquired the share of his sisters with respect to half share in the suit property covered by Ex.A1, decree for declaration granted in favour of 1st respondent is liable to be set aside.

12. As far as description of the suit property is concerned, the Courts below based on the evidence of PW.3-Village Administrative Officer and Ex.A14-A Register, Ex.A15-FMB of S.No.100 and other revenue documents produced by the 1st respondent, came to the conclusion that there is no dispute with regard to the identity of the property. Therefore, the said conclusion reached by the First Appellate Court is confirmed.



S.A.No.153 of 2017

WEB COPY

13. As far as relief of permanent injunction is concerned, it is settled law that a co-owner can maintain a suit for permanent injunction against a third party. In the case on hand, as discussed earlier, the 1st respondent is a co-owner along with his sisters. In such circumstances, he is entitled to maintain a suit for permanent injunction against the appellant.

14. In view of the findings reached by this Court that the suit property has been properly identified by the evidence of PW.3 and other revenue documents, the decree for permanent injunction granted by the First Appellate Court need not be interfered with.

In Nutshell:-

(i) The Second Appeal is partly allowed by setting aside the judgement and decree passed by the Courts below with regard to relief of declaration.

(ii) The judgement and decree passed by the Courts below with regard



S.A.No.153 of 2017

to relief of permanent injunction is confirmed.

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(iii) However, liberty is granted to the 1st respondent to file a fresh suit for declaration and other appropriate relief by impleading his sisters.

(iv) Consequently, the connected civil miscellaneous petition is closed.

(v) In the facts and circumstances of the case, there will be no order as to costs.

16.10.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

1.The Subordinate Judge Court,
Namakkal.

2.The Additional District Munsif Court,
Namakkal.

11/12



WEB COPY



S.A.No.153 of 2017

S.SOUNTHAR, J.

dm

S.A.No.153 of 2017

16.10.2023