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S.A.No.247 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.247 of 2017
and
CMP.No.5827 of 2017

Rajangam (Died)

- 1.Thangamani
- 2.Radhakrishnan
- 3.Muthukrishnan
- 4.Jayaraman

...Appellants

Vs.

Swaminathan (Died)

- 1.Dakshinamurthy
- 2.Anjalai Ammal
- 3.Pichai Pillai
- 4.Jayam
- 5.T.Mangaiarkarasi
- 6.K.Poongothai
- 7.T.Pagutharivu

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 19.10.2016 on the file of the Additional District and Sessions Judge, Ariyalur, dismissing the appeal and



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confirming the judgment and decree dated 28.02.1995 passed in OS.No.776 of 1992 on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Mr.R.Gururaj

JUDGMENT

The unsuccessful plaintiff is the appellant in the suit for declaration and injunction. The suit filed by the appellant was dismissed by the trial Court and findings of the trial Court were confirmed by the First Appellate Court. Hence, the plaintiff is before this Court by way of this Second Appeal.

2. According to the appellant/plaintiff, the portion of the suit property mentioned as 'ABGH' in the plaint plan was purchased by his father from one Ponnusamy in the year 1957 by way of a registered sale deed. There was oral partition in the family 20 years back, whereunder the plaintiff was allotted the southern half in 'ABGH' and the plaintiff's young brother was allotted the northern half. Since such mode of partition was not convenient, in the year 1986, again there was a partition, whereunder the portion mentioned as 'ABCD' in the southern extremity of 'ABGH' and the portion shown as



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'EFGH' in the northern extremity of ABGH were allotted to the share of the plaintiff and the middle portion was allotted to the plaintiff's younger brother Oppilamani.

3. It is the specific case of the appellant that he has been in possession of 'ABCD' and 'EFGH' portion from date of such partition. The plaintiff's father appeared to have executed a registered sale deed in respect of entire property purchased by him namely, 'ABGH' portion in favour of one Kumarasamy and the said Kumarasamy in turn appeared to have sold the property to the first defendant. It was contended by the appellant that the said sale deed executed by the plaintiff's father in favour of Kumarasamy and sale deed executed by Kumarasamy in favour of the first defendant were sham and nominal documents and the respondents/defendants had never taken possession of the property in pursuance of the said sale deed.

4. It was further pleaded that taking advantage of mental depression of the appellant's father, his brother namely the first defendant prevailed upon him and got the sale deed executed in favour of Kumarasamy. Subsequently, the first defendant got the sale deed in his name from the said



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Kumarasamy. It was further pleaded that the respondents attempted to interfere with the possession of the appellant and hence, he was constrained to file a suit for declaration and injunction as prayed for.

5. The respondents/defendants filed a written statement denying the title as well as the possession of the appellant over the suit property. The claim of the appellant regarding the oral partition and allotment of portion of the suit property in his father and the alleged possession was specifically denied. It was claimed by the respondents that the entire property shown as 'ABGH' in the plaint plan was purchased by Govindhasamy namely father of the appellant. He sold the same in favour of Kumarasamy by sale deed dated 28.05.1983. The first respondent/first defendant purchased the said property from Kumarasamy on 09.04.1984 and from that date onwards, the first respondent/first defendant and his son/second defendant have been in possession and enjoyment of the suit property. The allegation raised in the plaint as if the registered sale deed in favour of the first respondent and the said Kumarasamy were sham and nominal documents was also specifically denied. It was further averred by the respondents that the superstructure in the suit property was let out to Sedhuammal wife of Oppilamani.



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6. Before the trial Court, the appellant was examined as PW1 and three witnesses were examined on his behalf as PW2 to PW4. 15 documents were marked on behalf of the appellant as Ex.A1 to A15. The second defendant, who is the son of first defendant, was examined as DW1. One Sivasamy was examined as DW2 on behalf of the respondents/defendants and 14 documents were marked as Ex.B1 to Ex.B14.

7. The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the father of the appellant sold the property to one Kumarasamy and from him the first respondent purchased the suit property. From the oral and documentary evidence available, the trial Court came to the conclusion that the plea of the sham and nominal document raised by the appellant was not proved and hence, the title and possession of the first respondent were confirmed. Therefore, the suit was dismissed by the trial Court. Aggrieved by the same, the appellant preferred an appeal in A.S.No.6 of 2015 on the file of the Additional District and Sessions Court, Ariyalur. The First Appellate Court confirmed the findings of the trial Court and dismissed the first appeal. Aggrieved by the same, the appellant is before this Court.



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8. The learned counsel for the appellant mainly contended that even assuming the appellant not succeeded in proving his plea of sham and nominal document, he succeeded in proving his possession over the suit property and hence, the Courts below ought to have granted a decree for limited injunction. The learned counsel for the appellant by taking this Court to the Advocate Commissioner's plan and report filed in earlier litigation between the parties, which was marked as Ex.A14, submitted that the Advocate Commissioner clearly found that in the middle portion of the suit property there was a house belonged to Oppilamani younger brother of the appellant. Therefore, the said finding by the Advocate Commissioner probalized the case of the appellant that there was an oral partition in the year 1986 and property on southern and northern extremity were allotted to him.

9. The appellant herein filed a suit for declaration and injunction by raising a specific plea that the registered document executed by his father in favour of Kumarasamy and subsequent registered document executed by Kumarasamy in favour of the first respondent were sham and nominal documents. The sale deed executed by the plaintiff's father in favour of



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Kumarasamy was marked as Ex.A3. The subsequent sale deed executed by Kumarasamy in favour of the first respondent was marked as Ex.B4. The original sale deed in favour of the plaintiff's father dated 18.04.1957 was produced from the custody of the first respondent and marked as Ex.B2. If the sale transaction between the plaintiff's father and Kumarasamy were sham and nominal document, there is no chance for the first respondent to produce the original sale deed in favour of the plaintiff's father dated 18.04.1957. Further, the appellant who challenged the registered document, in order to support the plea of sham and nominal document, failed to lead any acceptable evidence and hence both the Courts below on appreciation of evidence available on record came to the conclusion that the plea of sham and nominal document raised by the appellant was not proved. There is nothing available on record to interfere with the said concurrent findings of the facts by the Courts below.

10. As far as the possession is concerned, it is the case of the appellant that notwithstanding the registered sale deed in favour of Kumarasamy, the appellant's family continued to enjoy the suit property. In support of the contention, the learned counsel for the appellant relied on Ex.A4 Advocate Commissioner's plan filed in OS.No.4 of 1992 between the



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very same parties. In Ex.A4 Advocate Commissioner mentioned that Oppilamani's house is situated in the middle portion of the suit property. It is settled law that the Advocate Commissioner is not entitled to give a finding with regard to the fact of possession. Ex.A4 shall be take into consideration only for the limited purpose of proving physical features namely existence of thatched superstructure in the middle portion of the suit property. This Court cannot safely come to a conclusion that the middle portion belonged to Oppilamani only based on the Advocate Commissioner's plan which was marked as Ex.A3 & Ex.A4 in the earlier suit between the parties.

11. In view of the same, this Court cannot safely come to a conclusion that the appellant proved his possession over the suit property. Further in the written statement, the respondents raised their specific plea that the superstructure in the suit property was let out to one Sedhuammal wife of Oppilamani. In such circumstances, this Court is unable to accept the contentions raised by the appellant as if the possession of the appellant was proved by Ex.A3 and Ex.A4.



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12. It is also seen from the records that the first respondent filed a suit against the tenant seeking entire payment and recovery of possession of suit property in OS.No.222 of 1990 and the said suit was also decreed. The decree copy in OS.No.222 of 1990 was marked as Ex.B14 on the side of the respondents. In such circumstances, the appellant failed to prove his alleged possession over the suit property.

13. In view of the discussions made earlier, this Court finds that there is no need to interfere with the concurrent findings rendered by the Courts below and consequently, the Second Appeal is dismissed.

14. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

18.10.2023

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S.SOUNTHAR, J.
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To

- 1.The Additional District and Sessions Judge, Ariyalur.
- 2.The Additional District Munsif Court, Ariyalur.

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