



S.A.No.446 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM

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

S.A.No.446 of 2023

and

C.M.P.Nos.13405 & 13406 of 2023

M.Jeganathan

... Appellant

Vs.

1.Senthil Kumar

2. Sakthivel (Minor)

Represented by his Mother

and natural Guardian Suguna

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the decree and judgment made in A.S.No.124 of 2018 dated 09.08.2021 on the file of the Additional Sub Court, Mayiladuthurai, confirming the judgment and decree made in O.S.No.95 of 2013 dated 07.09.2018 on the file of the District Munsif Court, Sirkazhi.

For Appellant : Mr.S.Sadasharam

For R1 : Mr.B.Jawahar



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JUDGMENT

The Second Appeal has been filed by the appellant/defendant, who lost his case before both the Courts below.

2. The respondents herein/plaintiffs, filed the Suit seeking to declare them as owners of the suit 'B' schedule property and consequential relief to remove the fence and roof put up by the defendant in the suit 'B' schedule property and to hand over the possession to the plaintiffs. The suit was decreed in favour of the plaintiffs, against which, the appellant/defendant has filed the Appeal Suit. The judgment and decree of the trial Court was confirmed by the appellate Court. Challenging the same, the present Second Appeal has been filed by the defendant.

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

4. The case of the plaintiff is as under:-

4.1. The suit 'A' schedule property, which is a punja land



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comprised in Survey No.281/3 ad measuring 68 cents originally belonged to one Bakkiyathammal, who had purchased the same through a registered sale deed dated 14.11.1935.

4.2. The said Bakkiyathammal and her husband passed away leaving behind them two daughters named Govindammal, Alamelu and one son Chandrakasu. Among them, the two daughters are no more. One Amirthavalli, the daughter of Govindammal and her husband Natesan also died. They had no children. The second daughter Alamelu has got a daughter by name Virudhambal. The said Virudhambal was given in marriage to Chandrakasu, the son of Bakkiyathammal. They have a daughter by name Suguna, who is the mother of the plaintiffs

4.3. The parents of Suguna viz., Chandrakasu and Virudhambal had passed away. Prior to her death, the said Virudhambal, daughter of Alamelu and granddaughter of Bakkiyathammal had executed a Will dated 23.6.2009 in favour of her daughter Suguna, After the death of the said Virudhambal on 4.7.2009, Suguna, being the only legal heir, had been in enjoyment of the suit property by acquiring the same.

4.4. The said Suguna, who is the mother of the plaintiffs, out of love and affection, has executed a settlement deed dated 21.12.2011 in



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favour of the plaintiffs, which was registered in the Sub Registrar Office, Sirkazhi, in Doc.No.4509/2011.

4.5. Whiles, during the month of December 2011, the defendant encroached upon the suit 'A' schedule property by fencing the same and the encroached portion of the property is mentioned as 'B' schedule property.

4.6. The plaintiffs had sent a notice to the defendant on 27.03.2013 seeking to vacate their property and hand over the possession to them. The defendant sent a reply through his counsel on 10.04.2013 claiming that one Amirthavalli and Virudhambal, the grandmother of the plaintiffs, by an unregistered sale deed dated 18.07.1990, had sold the 'B' schedule property to the defendant and refused to vacate the 'B' schedule property.

4.7. The plaintiffs have denied the contention of the defendant with regard to the execution of the said deed and also denied that the defendant was in possession of 'B' schedule property from 1990. Therefore, the suit has been filed in O.S.No.95 of 2013 before the learned District Munsif, Sirkazhi.

5. The crux of the written statement filed by the defendant is as



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under:-

5.1. The defendant had contended that the suit schedule property belonged to one Govindammal, first daughter of Bakiyathammal and one Amirthavalli is the legal heir of the said Govindammal. The said Amirthavalli and the grandmother of the plaintiffs had executed an unregistered sale deed dated 18.07.1990 in respect of 16 cents in Survey No.281/3B, in favour of the defendant and from 1990, he was in continuous possession.

5.2. The further contention of the defendant is that no Will was executed by Virudhambal in favour of the plaintiffs' mother Suguna and it was a forged one. Thereby, the plaintiffs are not entitled to the suit 'B' schedule property. Hence the present suit is liable to be dismissed with costs.

6. Based on the pleadings, the trial Court framed the following issues.

1. Whether the plaintiffs are entitled to the relief of declaration in respect of the suit 'B' schedule property?
2. Whether the plaintiffs are entitled for the recovery of possession in respect of 'B' schedule property, by removing the construction in it?



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3. To what other relief ?

7. During trial, on the side of the plaintiffs, PW1 to PW4 were examined and exhibits Ex.A1 to Ex.A13 were marked. On the side of the defendant, DW1 and DW2 were examined and Ex.B1 and Ex.B2 were marked.

8. The trial Court, after taking into consideration the evidence on record, had decreed the suit and directed the defendant to vacate and hand over the possession to the plaintiffs. Aggrieved against the same, the defendant has filed the appeal in A.S.No.124 of 2018 on the file of the Additional Sub Court, Mayiladuthurai.

9. The first appellate Court framed the following points for consideration :-

1. Whether the trial Court is right in granting the relief of declaration as prayed for by the plaintiffs in respect of 'B' schedule property?
2. Whether the Will dated 23.06.2009 stated to be executed by Virudhambal is proved in accordance



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with law?

3. Whether the defendant had acquired the suit property by adverse possession ?
4. Whether the judgment and decree of the trial Court is liable to be set aside?
5. Whether the Appeal Suit is entitled to be allowed or not?

10. The first appellate Court, taking into consideration the evidence on record, had confirmed the judgment and decree passed by the trial Court. Aggrieved against the same, the present Second Appeal has been filed.

11. In the present Second Appeal, the appellant/defendant had filed an Application in C.M.P.No.13406 of 2023 seeking to mark the unregistered sale deed dated 18.07.1990 by which the 'B' schedule property alleged to have been sold to the defendant by Virudhambal and Amirthavalli. He further contented that the sale deed dated 18.07.1990 was misplaced at the Advocate office at Sirkazhi and could not be traced out and thereby, a photocopy of the same is now produced before this Court.



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12. Mr.S.Sadasharam, learned counsel appearing for the appellant/defendant submitted that the Courts below erred in not framing issue as to the date from which the appellant/defendant has taken possession of the suit 'B' schedule property and in such circumstances, both the Courts below did not take into consideration the same.

13. Learned counsel for the first respondent vehemently contended that the document which is stated to be filed at this stage is also not an original one and it is only a photocopy and no reason has been stated by the appellant for not marking the same before the trial Court as well as the first appellate Court and therefore, at this stage, this Application cannot be allowed. He further submitted that pursuant to the judgment and decree passed by the Courts below, the respondents/plaintiffs have also taken possession of the property.

14. Heard the learned counsel appearing on both sides and perused the judgments of the Courts below and other materials available on record.



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15. It is the case of the plaintiffs/respondents that the property originally belonged to one Bakkiyathammal and that her grand daughter Virudhambal, who is the daughter of Alamelu, had executed a Will dated 23.06.2009 in favour of her daughter Suguna, who is the mother of the plaintiffs, thereby, she acquired possession and enjoyment of the same and thereafter, the said Suguna had executed a settlement deed dated 21.12.2011 in favour of the plaintiffs. Whiles, the defendant/appellant had encroached the suit 'B' schedule property during the year of 2011. On the side of the plaintiffs, they have marked the sale deed dated 14.11.1935 as Ex.A1 through which Bakkiyathammal had purchased the suit property, a Will dated 23.06.2009, which was executed by Virudhambal in favour of the plaintiffs' mother, as Ex.A2, Death Certificate of Virudhambal as Ex.A3, settlement deed dated 21.12.2011 executed by the plaintiffs' mother in favour of the plaintiffs as Ex.A4, patta standing in the name of Virudhambal as Ex.A5. The above said documents were registered in respect of the 'A' schedule property in Survey No.281/3.

16. The defendant/appellant has claimed that the property of an



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extent of 16 cents in Survey No.281/3B was sold by Viruthambal and Amirthavalli to the defendant vide an unregistered sale deed dated 18.07.1990 and he also claimed that he had been in possession of the property from the year of 1990. The defendant had also denied the Will, Ex.A2, executed by Virudhambal in favour of Suguna and the right of Sugana to execute the settlement deed in favour of the plaintiffs.

17. Pending the suit, the suit property was surveyed by the Revenue Official and a Report and Sketch came to be filed, which were marked as Ex.C1 and Ex.C2. As per Ex.C1, the 'A' schedule property is found in Survey No.281/3B1=02136 Sq.meter and in Survey No.281/3B2=0614 Sq.meter and the 'B' schedule property is found in the same survey number to an extent of 649.50 Sq.meter.

18. A perusal of the materials would disclose that the plaintiffs have proved their line of succession in respect of the suit property by adducing oral and documentary evidence. They have produced the original sale deed, Ex.A1 dated 14.11.1935, a document executed four generations prior to them, through which the suit property was purchased by



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Bakkiyathammal, the original Will Ex.A2 dated 23.6.2009 executed by their grandmother Virudhambal in favour of Suguna, mother of the plaintiffs and the original Settlement Deed, Ex.A4 dated 21.12.2011 executed by their mother in favour of the plaintiffs. The plaintiffs have also examined P.Ws.2 and 3 to prove the execution of the Will Ex.A2 and they have clearly spoken about the execution of the Will.

19. On the contrary, the defendant claims title to the suit 'B' schedule property based on an unregistered sale deed dated 18.7.1990 alleged to have been executed by the granddaughters of Bakkiyathammal viz., Amirthavalli and Virudhambal on one hand and based on adverse possession on the other hand. Firstly, it has to be seen that it is the settled law that the plea of ownership based on sale deed and plea of adverse possession are contrary to each other and both the pleas cannot be taken at the same time. Further, the defendant has not adduced any evidence to prove his continuous and uninterrupted possession of the suit property adverse to the rights of the plaintiffs for the statutory period. Thereby the second contention has to be ruled out.



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20. What remains to be determined is whether the defendant has proved his claim of title to suit 'B' schedule property on the basis of the unregistered sale deed dated 18.7.1990. The defendant projects his case based on the unregistered sale deed as against the right and title acquired by the plaintiffs based on registered documents viz., sale deed, Will and settlement deed. Virtually, the defendant had not produced any document to substantiate his title including the unregistered sale deed dated 18.7.1990, rather, he has chosen to produce copies of some other sale deeds as Exs.B1 and B2 which are not relevant to the present case.

21. In fact, the defendant seeks to file a xerox copy of the unregistered sale deed dated 18.7.1990 as an additional document before this court. On a perusal of the Affidavit filed in support of the petition seeking to file the copy of the document, this court finds that no valid reason has been adduced by the defendant for non-production of the same before courts below and thereby, this court is not inclined to receive the same as additional document and thus, the petition seeking to file the document as additional evidence is liable to be dismissed.



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22. Coming to defence taken by the defendant, it is very much surprising to note that when the plaintiffs had sent a notice, Ex.A9 on 27.3.2013 to the defendant demanding him to hand over the possession of the suit 'B' schedule property from his unauthorised possession, the defendant had chosen to restrict himself only to give a reply, Ex.A11 dated 10.4.2013 contending that he had been in possession and enjoyment of the suit property based on an unregistered sale deed dated 18.7.1990, without proceeding against the plaintiffs to protect his rights over the suit 'B' schedule property. It is still worse that he had not adduced any evidence to substantiate his claim even in the suit filed by the plaintiffs except making an attempt to question the validity and genuineness of the Will, Ex.A2 dated 23.6.2009 executed by Virudhambal in favour of Suguna, based on which, the said Suguna, mother of the plaintiffs had acquired the suit property and later settled the same in favour of the plaintiffs. The defendant being a third party to the Will and having not proved his case of acquiring title either by any valid sale deed or perfected his title by adverse possession, is not entitled to question the validity of the Will or entitlement of the executant to execute the Will.



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23. In an overall view, this Court finds that the Courts below taking into consideration the evidence of record, had rightly decreed the suit. Having perused the materials available on record, this Court does not find any infirmity in the findings of both the Courts below. Further, this Court does not find any substantial question of law is involved to admit this present Second Appeal.

24. 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



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*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."*

25. In the light of the above decision, sans any substantial question of law, the Second Appeal fails and the same is dismissed, confirming the concurrent findings rendered by the Courts below. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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A.D.JAGADISH CHANDIRA.,J.

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To

1. The Additional Sub Court, Mayiladuthurai.
2. The District Munsif Court, Sirkazhi.
3. The Section Officer, VR Section, High Court of Madras.

***S.A.No.446 of 2023
and C.M.P.Nos.13405 & 13406 of 2023***

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