



S.A.(MD)No.16 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD)No.16 of 2008

A.Sethuraman

...Appellant

vs.

1.A.Radhakrishnan

2.A.Rajasekar

3.A.Murugesan

4.A.Maheswaran

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 06.02.2007 in A.S.No. 93 of 1998 on the file of the Additional District Judge (Fast Track Court IV), Periyakulam reversing the Judgment and Decree dated 21.07.1998 in O.S.No.86 of 1997 on the file of the District Munsif cum Judicial Magistrate, Bodinayakkanur.

For Appellant : Mr.S.Madhavan

For Respondents : No appearance



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JUDGMENT

The appellant is the plaintiff in the suit in O.S.No.86 of 1997 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur. The respondents are the defendants in the above suit.

2. The suit was filed by the appellant / plaintiff seeking for permanent injunction restraining the respondents / defendants and their men from interfering with his possession and enjoyment of the suit schedule property.

3. The case of the plaintiff is that the suit scheduled property originally belonged to one Vadamalu Servai and his minor sons. Vadamalu Servai on his behalf and on behalf of his sons, sold the property to the plaintiff by virtue of sale deed Ex.A1, dated 17.01.1969. Since the plaintiff was minor at that time, the plaintiff's grandmother purchased the property as a guardian of the plaintiff. After attaining majority, in the year 1971, the plaintiff took possession of the suit



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schedule property. Subsequently the plaintiff obtained Patta in his favour and the same was marked as Ex.A2, dated 10.08.1991. The plaintiff has been paying kist regularly. The plaintiff as a owner is in possession and enjoyment of the suit schedule property. The defendants are the brothers of the plaintiff. The defendants have no right or title over the property. The defendants were never in possession and enjoyment of the suit schedule property. The plaintiff and the defendants are living separately. The defendants tried to interfere with the possession and enjoyment of the suit schedule property on 16.01.1994 and the same was prevented. Therefore, the plaintiff filed the suit.

4. The case of the defendants is that as per the partition that took place in the family on 30.12.1979, the suit schedule property is allotted to the third defendant and the same is in separate enjoyment of the third defendant. The plaintiff and the defendants are brothers. Since the father of the plaintiff and the defendants, namely, Arunachalam (late) had many number of lands, in order to get exemption from land ceiling, the suit schedule property was purchased in the name of the plaintiff. Though,



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the property was purchased in the name of the plaintiff, the same was enjoyed by the family members as a joint family property. Since the plaintiff is the elder member of the family, the documents are available with him. The family arrangement that had taken place on 30.12.1979 was accepted by all the family members. As per the family arrangement, the plaintiff was allotted 2 acres and 8 cents of land in S.No.1708/3. The grandmother of the plaintiff and the defendants passed away after the family arrangement. The plaintiff has filed the suit suppressing all the facts.

5. Before the Trial Court, the plaintiff has examined himself as PW1 and one another as PW2 and marked 45 documents as Exs.A1 to A45 in order to substantiate his case. The defendants examined four witnesses DW1 to DW4 including the third defendant (DW1) and marked 18 documents as Exs.B1 to B18 in order to substantiate their case.



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6. After considering the oral and documentary evidence on both sides, the Trial Court came to the conclusion that since the plaintiff was a minor, the suit schedule property was purchased in the year 1969 by the grandmother of the plaintiff as a guardian of the plaintiff and that after attaining majority, the plaintiff took possession of the property and obtained Patta in his name. The Trial Court found that kist was paid by the plaintiff regularly for the suit schedule property and kist receipts were also issued in his name. Therefore, the Trial Court granted Judgment and Decree in favour of the plaintiff.

7. Aggrieved over the said Judgment and Decree, an appeal was filed by the third defendant in A.S.No.93 of 1998 before the Additional District Judge (Fast Track Court IV), Periyakulam. After hearing both sides, the first Appellate Court came to the conclusion that though the suit schedule property was purchased in the name of the plaintiff, it was treated as joint family property and that the suit schedule property was purchased in the name of the plaintiff only to avoid land ceiling. The



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first Appellate Court, therefore, set aside the Judgment and Decree granted by the Trial Court. Aggrieved over the same, the appellant / plaintiff filed the present Second Appeal.

8. This Court admitted this appeal on 08.01.2008, by framing the following substantial question of law.

"Whether the finding of the first appellate court with respect to document dated 30.12.1979 and Ex.B17 is perverse inasmuch as there is absence of admissible evidence to show the existence of such document?"

9. The learned counsel for the appellant submitted that there is no document available to prove the family arrangement that is said to have taken place on 30.12.1979 and that Ex.B17, document filed in support of the family arrangement is a concocted document. The learned counsel further submitted that the first respondent / third defendant using his influence, has created bogus Tax Receipts in order to substantiate his



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case. He also submitted that the first Appellate Court erred in finding that the appellant / plaintiff filed an injunction suit without filing a declaration suit and that when the title document of the suit schedule property, revenue records and tax receipts stand in the name of the appellant / plaintiff, there is no necessity to file a declaration suit. Therefore, the learned counsel prayed for setting aside the order passed by the first Appellate Court and confirming the order passed by the Trial Court.

10. Eventhough, notice has been served and the names of the respondents are printed in the cause list, there is no representation on behalf of them. Therefore, this Court, after hearing the learned counsel for the appellant and perusing the oral and documentary evidence on record, proceeded to pass orders.

11. The appellant / plaintiff has filed a suit in O.S.No.86 of 1997 before the District Munsif cum Judicial Magistrate, Bodinayakkanur for permanent injunction restraining the respondents / defendants and their



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men from interfering with his possession, since he is the owner and is in absolute possession of the suit schedule property. Since the appellant / plaintiff was minor in the year 1969, the suit schedule property was purchased by the grandmother of the plaintiff as a guardian of the plaintiff. The sale deed pertaining to the purchase was marked as Ex.A1. The plaintiff attained majority in the year 1971. Subsequently, he obtained Patta in his favour for the suit schedule property. The said Patta was marked as Ex.A2. The appellant / plaintiff filed as many as 45 documents including Patta, Chitta, Adangal Extract and Revenue receipts up the year of filing the suit to prove that he is in possession of the property. The appellant / plaintiff has also paid the kist properly.

12. The defence taken by the defendants was that the suit schedule property was a joint family property and for the purpose of avoiding the land ceiling, it was purchased in the name of the plaintiff. That apart, another defence is that, by way of a family arrangement, the suit schedule property was allotted to the third defendant on 30.12.1979 and all the parties agreed to go by that family arrangement. In order to substantiate



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the family arrangement, Ex.B17, dated 11.02.1993 was marked by the defendants. However, nothing has been mentioned in the Ex.B17 about the property for which the family members have entered into agreement. It is to be noted that no appropriate document is available to prove the family arrangement that is said to have taken place on 30.12.1979. Even on the assumption and presumption that family arrangement had taken place on 30.12.1979, it would be for the ancestral properties and the properties purchased by the father of the plaintiff and the defendants. At any cost, the present suit schedule property was purchased by the grandmother in favour of the plaintiff, which is an independent property and does not come under the joint family properties.

13. The another main defence taken by the respondents / defendants is that the suit schedule property was purchased in the name of the appellant / plaintiff only to avoid land ceiling. The respondents / defendants while taking such a defence, ought to have filed documents to show that the father of the plaintiff and the defendants had large extent of land beyond the limit of land ceiling. However, the respondents /



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defendants have failed to do so. The intention of the Land Ceiling Act was only to distribute the large extent of land which accumulates on one hand. In that analogies also, I do not agree with the approach of the first Appellate Court. Therefore, in any angle, this property cannot be considered as a joint family property. I am of the view that the first Appellate Court has arrived at a wrong conclusion and it suffers from non-application of mind. So as to answer the substantial question of law framed by this Court, as discussed above, since the details of the properties have not been mentioned in the Ex.B17, at any cost, Ex.B17 would not substantiate the case of the respondents / defendants that the suit schedule property was allotted to the third defendant by virtue of the family arrangement. Accordingly, the substantial question of law framed by this Court is answered in favour of the appellant / plaintiff.

14. Therefore, for the reasons stated above, the Judgment and Decree dated 06.02.2007 in A.S.No.93 of 1998 on the file of the Additional District Judge (Fast Track Court IV), Periyakulam is set aside. The Second Appeal is allowed. The Judgment and Decree dated



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21.07.1998 in O.S.No.86 of 1997 on the file of the District Munsif cum
Judicial Magistrate, Bodinayakkanur is hereby confirmed. No costs.

03.08.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Additional District Judge,
Fast Track Court IV, Periyakulam
- 2.The District Munsif cum Judicial Magistrate,
Bodinayakkanur
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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