



S.A.(MD).No.176 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.176 of 2023

and

C.M.P.(MD).Nos.3754 and 4331 of 2023

1.Seethalakshmi

2.Surulivasan

... Appellants/Appellants/Defendants

Vs.

Manikam

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree passed by the Hon'ble Sub Court, Sivagangai, Sivagangai District in A.S.No.01 of 2021 dated 08.09.2022 and confirming the judgment and decree passed by the Hon'ble District Munsif Court, Sivagangai, Sivagangai District in O.S.No.150 of 2016 dated 31.07.2019 and thus allow this Second Appeal with costs throughout and thus render justice.

For Appellants : Mr.R.Udhayakumar

For Respondent : Mr.George Raja

for Mr.P.Vijayakumar



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JUDGMENT

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This Second Appeal has been filed challenging the concurrent findings of the Courts below. The defendants in the suit O.S.No.150 of 2016 on the file of the District Munsif Court, Sivagangai are the appellants herein. The respondent is the plaintiff in the said suit. The suit was filed for a declaration to declare the respondent/plaintiff as the absolute owner of the suit schedule property and also to direct the appellants/defendants to vacate and hand over the vacant possession of the suit schedule property to the respondent/plaintiff. In the suit, the respondent/plaintiff also sought for the relief of permanent injunction to restrain the appellants/defendants from in any way constructing a new building in the suit schedule property. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The first defendant is the plaintiff's brother's daughter and the second defendant is the husband of the first defendant and also the brother-in-law of the plaintiff. According to the plaintiff, his father-in-law Raju after his retirement asked the defendants to occupy the suit schedule property by way of permissive occupation. According to the plaintiff, his father-in-law Raju died on 05.08.2014. Thereafter, the plaintiff requested the defendants to vacate the suit schedule property and hand over possession of the same to him. The



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plaintiff claims ownership of the suit schedule property by tracing his title as follows:

a) Originally, the suit schedule property was belonging to his father Ungu @ Kannan.

b) Based on an oral family partition, the suit schedule property was allotted to the plaintiff and the revenue records including patta were also mutated in his favour.

3. On the other hand, the defendants as seen from their written statement claim that they had orally purchased the suit schedule property from the plaintiff for a sum of Rs.70,000/- in the year 1996 and thereafter, they had built a house over the same in the year 1997. According to them, subsequent to their purchase, they had also improved the suit schedule property and had also planted fruit yielding trees.

4. Based on the pleadings of the respective parties, the Trial Court framed the following issues:

- a) Whether the plaintiff is entitled to the suit schedule property?
- b) Whether in a portion of the suit schedule property, the first defendant had constructed a house in the year 1997?



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c) Whether the defendants are entitled to claim ownership rights over the suit schedule property?

d) Whether the declaratory relief sought for by the plaintiff is maintainable?

e) Whether the recovery of possession sought for by the plaintiff is maintainable?

f) Whether the relief of permanent injunction sought for by the plaintiff is maintainable?

g) To what other reliefs the parties are entitled there to?

5. Before the Trial Court, the plaintiff filed three documents, which were marked as exhibits A1 to A3. Ex.A1 is the patta standing in the name of the plaintiff dated 28.06.2016. Ex.A2 are the house tax receipts (2 Nos) standing in the name of the plaintiff. Ex.A3 are the revenue records (3 Nos) standing in the name of the plaintiff. On the side of the plaintiff, five witnesses were examined, namely, P.W.1 to P.W.5. The witnesses include the plaintiff as well as the Secretary of Kanchirangal Panchayat (P.W.3), Deputy Block Development Officer, Sivagangai (P.W.4) and Zonal Deputy Block Development Officer, Sivagangai (P.W.5). P.W.3 to P.W.5, the official witnesses have all deposed that the revenue records are standing only in the name of the plaintiff for the suit schedule property. On the side of the



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defendants, 12 documents were filed, which were marked as exhibits B1 to B12. Out of the exhibits marked, no revenue records have been produced by the defendants. Even though house tax receipts have been filed standing in the name of the defendants, the official witnesses, namely, P.W.3 to P.W.5, have deposed that the said receipts were issued in the name of the person, who has actually made the payment. Through P.W.3 to P.W.5, the official witnesses, 3 documents were also marked. The official witnesses P.W.3 to P.W.5 have categorically deposed that any person making the payment towards house tax, the receipts issued will disclose the name of the person making the payments.

6. The Trial Court based on the oral and documentary evidence available on record, after taking note of the fact that the revenue records, namely, patta (Ex.A1) and other revenue documents (Ex.A3) were standing in the name of the plaintiff, has come to the conclusion that the plaintiff is entitled for the relief of declaration as prayed for in the suit. Even though the defendants in their written statement and in their deposition, have claimed that the suit schedule property was purchased from the plaintiff for a sum of Rs.70,000/- in the year 1996 and they had built a house thereafter in the year 1997, they have not produced any documentary evidence to substantiate the said claim. The Trial Court has rightly rejected their contention as there is no evidence produced by



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them for the said contention. Even though with regard to the building, the plaintiff has also not provided any proof for having constructed the said building, the Trial Court has rightly held that the building was in existence even prior to the oral partition based on which the plaintiff claims right over the suit schedule property. No contra evidence has also been produced by the defendants to disprove the contention of the plaintiff that there was a building in the suit schedule property even prior to the oral partition. The revenue records also stand in the name of the plaintiff subsequent to the date when he became the absolute owner of the suit schedule property. No title deeds or revenue documents stand in the name of the defendants. In fact, patta is not a document of title, but since the first defendant has admitted in her proof affidavit (chief examination) that the plaintiff has been allotted the suit schedule property under a partition, there is no necessity for the Courts below to examine the issue as to whether the plaintiff is the owner of the suit schedule property or not. The defendants also claim that they had orally purchased the suit schedule property only from the plaintiff and therefore, they admitted the title of the plaintiff over the suit schedule property. Only based on the oral and documentary evidence available on record, the Trial Court has rightly come to the conclusion that the plaintiff is entitled for the suit reliefs and has rightly decreed the suit in favour of the plaintiff.



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7. The Lower Appellate Court, namely, the Sub Court, Sivagangai in A.S.No.01 of 2021 by its judgment and decree dated 08.09.2022 has rightly confirmed the findings of the Trial Court by dismissing the first appeal filed by the defendants.

8. Before this Court, an application has been filed, namely, C.M.P. (MD).No.4331 of 2023 seeking for an ad-interim direction to direct the Authorized Officer, Regional Forensic Sciences Laboratory Department, Madurai Medical College Campus to conduct the polygraph test between the respondent along with the defendants within a time frame to be fixed by this Court to unearth the truth. A polygraph test is conducted only in a criminal case and not in a civil case. Only for the purpose of establishing *mens rea* (criminal intent), polygraph test is conducted, that too, in the rarest of rare cases. In a civil case, the parties will have to prove their respective case through oral and documentary evidence. The plaintiff having discharged his burden of proving his case as per Section 101 of the Indian Evidence Act, the onus was shifted to the defendants to disprove the plaintiff's claim by letting in oral and documentary evidence. The oral and documentary evidence produced by the defendants does not disprove the contentions of the plaintiff as rightly



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held by the Courts below. Therefore, C.M.P.(MD).No.4331 of 2023 is dismissed.

9. For the foregoing reasons, this Court is of the view that the issues raised by the appellants/defendants in this Second Appeal have all been rightly considered by the Courts below in accordance with law. There are no debatable questions of fact or law involved for further consideration by this Court. In the result, there is no merit in this Second Appeal.

10. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, C.M.P.(MD).No.3754 of 2023 stands closed.

10.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

1.The Sub Court,
Sivagangai.

2.The District Munsif Court,
Sivagangai.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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