



S.A(MD).No.688 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.688 of 2020
and C.M.P(MD)No.7200 of 2020

M/s.Revathi Agro Private Ltd.,
Office at Door No.3-6-612,
3rd Floor, Himayat Nagar,
Hydrabad – 29,
Through its Managing Director,

.... Appellant/Appellant/6th Defendant
Vs.

1. V.Kumarasamy
2. K.Samuthiram
3. Ponrakkammal
4.Parvathy
5.K.Vellaichamy
6.K.Muthu Irulandi

... 1st Respondent/1st Respondent /Plaintiff

..Respondents 2 to 6/Respondents 2 to 6/
Defendants 1 to 5

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 31.01.2019 passed in A.S.No.4 of 2016 on the file of the Subordinate Court, Kovilpatti, confirming the judgment and decree dated 01.09.2015 passed in O.S.No. 278 of 2010 on the file of the District Munsif Court, Kovilpatti.

For Appellant : Mrs.M.Muthu Kavitha
for Mr.K.Muthu Ganesa Pandian

For R1 : Mr.S.Kadarkarai



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J U D G M E N T

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This Second Appeal has been filed challenging the concurrent findings of the courts below. The appellant is the 6th defendant in the suit in O.S.No.278 of 2010 on the file of the District Munsif Court, Kovilpatti. The first respondent is the plaintiff in the said suit. The respondents 2 to 6 are the defendants 1 to 5 in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for declaration to declare that the plaintiff is the absolute owner of the suit schedule property and also relief of consequential injunction was sought for to restrain the defendants from disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule property. The declaratory relief was also sought in the plaint to declare the sale deed dated 17.05.2007 executed by the defendants 1 to 5 in favor of the 6th defendant as null and void.

3. As seen from the plaint, it is the plaintiff's case that the suit schedule properties originally belonged to one Subbaramanaicker ancestrally. He died intestate leaving behind his Son Thathaiyanaicker @ Venkatarama Naicker, daughters Ayyammal and Kannamani @ Pappammal.



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According to the plaintiff, there was an oral partition among the siblings. As per the said oral partition, Thathaiyanaicker @ Venkatarama Naicker was allotted 7 Acres and 91 cents in S.No 14/1 and the sisters were jointly allotted 7 Acres and 92 cents in S.No 14/1A. Subsequently, in S.No.14, the land allotted to the sisters was sub-divided as S.No 14/1A and patta No. 634 was issued. Similarly, the land allotted to Thathaiyanaicker @ Venkatarama Naicker was sub-divided as S.No 14/1B and patta No 302 was issued.

4. According to the plaintiff, Thathaiyanaicker @ Venkatarama Naicker executed a gift deed dated 09.09.1968 in favor of one Krishnan, the husband of the first defendant, to an extent of 4 Acres of land on the southern side of his land and he retained the remaining portion of land. The said Krishnan has in turn executed a gift deed in favor of his wife (1st defendant herein). According to the plaintiff, Thathaiyanaicker @ Venkatarama Naicker died unmarried and intestate on 1988 leaving behind his sisters as legal heirs. Therefore, according to the plaintiff, Ayyammal and Kannamani @ Pappammal inherited the property. Kannamani @ Pappammal also died on 29.05.1998 leaving behind her only sister Ayyammal as her only legal heir and the sole owner of the property.



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5. According to the plaintiff, Ayyammal executed a registered Will in favor of the plaintiff on 02.05.2007 (Ex.A.1). Ayyammal died on 18.06.2007. After her death, by virtue of a registered Will dated 02.05.2007, the plaintiff became the absolute owner of the suit schedule property. According to the plaintiff, he came to know on 30.11.2007 that Krishnan created a fraudulent deed and got a patta transferred in favor of his wife and children (the defendants 2 to 5) and also has executed a fraudulent sale deed in favor of the 6th defendant on 17.05.2007. The plaintiff has also initiated criminal proceedings as against the defendants. The plaintiff has also initiated patta proceedings to cancel the fraudulent patta obtained by the defendants 1 to 5 and that has been subsequently cancelled pursuant to the application for cancellation of patta filed by the plaintiff. Prior to the institution of the suit, the plaintiff has also issued a legal notice to the defendants since the 6th defendant, who is said to have purchased the property under the sale deed dated 17.05.2007, was interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. In such circumstances, the plaintiff has filed the present suit for declaration and for consequential injunction.



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6. Before the trial court, the 6th defendant, who claims to be the purchaser of the suit schedule property under the sale deed dated 17.05.2007, alone has filed his written statement. The 6th defendant claims to have purchased the suit schedule property under the sale deed dated 17.05.2007 from the defendants 1 to 5. According to the 6th defendant, the defendants 1 to 5 are the predecessors in title and that the plaintiff is trying to grab the suit schedule property illegally. According to the 6th defendant, only after verifying the title of the defendants 1 to 5, he had purchased the suit schedule property. He claims that he is in possession and enjoyment of the suit schedule property ever since the date of his purchase i.e from 17.05.2007. The 6th defendant has also disputed the Will executed in favour of the plaintiff based on which the plaintiff claims title over the suit schedule property. The 6th defendant also claims that the predecessor in title of the defendants 1 to 5 have got the title over the suit schedule property by peaceful possession since they are in possession for more than 30 years uninterruptedly. Hence, according to the 6th defendant, the suit is not maintainable.

7. Based on the pleadings of the respective parties, the trial court framed appropriate issues before the trial court. The plaintiff filed 40



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documents, which were marked as Ex.A.1 to Ex.A.40 and 3 witnesses were examined on his side namely, P.W.1 to P.W.3. On the side of the defendants, 8 documents were marked as Ex.B.1 to Ex.B.8 and 5 witnesses were examined namely, D.W.1 to D.W.5. The trial court has decreed the suit in O.S.No.278 of 2010 in favour of the plaintiff by its judgment and decree dated 01.09.2015 by giving the following reasons:

- a) The plaintiff has proved the Will (Ex.A.1) by examining the attesting witness one Ponramakrishnan as P.W. 2, who has deposed that the other witness has also affixed his signature in his presence. P.W.2 has also deposed that the executor Ayyammal has seen the attestor signing the Will and she was in a sound state of mind at the time of executing the Will.
- b) The Notary Public Mr.Annamalai has examined himself as P.W. 3 and he has deposed that the executor of the Will as well as the attesting witnesses signed in his presence and he has certified the same.
- c) The plaintiff has produced documents to show that the Will was acted upon and he has been in possession and enjoyment of the suit schedule property. The defendants have failed to adduce oral and documentary evidence to disprove the aforesaid Will executed in



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favour of the plaintiff.

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d) Though the 6th defendant/appellant has not taken the plea of Limitation in his written statement, he has taken a stand that the suit is barred by limitation as per Article 58 of the Limitation Act, 1963 only during the course of the arguments in O.S.No.278 of 2010 and to substantiate the same he relied upon Ex.A.34 and Ex.A3. Ex.A.34 is the notice sent by the plaintiff to the Kovilpatti Tahsildar dated 28.07.2007, whereas the suit was signed on 27.11.2010 and presented on 28.11.2010.

e) The plaintiff has initiated the revenue proceedings as against the defendants 1 to 5 with respect to the fraudulent online patta created by them and that has got nothing to do with the title dispute or the possessory right over the suit property. Moreover, the cause of action arose only as stated in the plaint and hence the same is not barred by limitation.

f) It is an admitted fact that Thathaiyanaicker @ Venkatarama Naicker was the owner of the property and he had executed a gift deed in favor of one Krishnan on 09.09.1968 only to an extent of 4Acres alone.

h) The defendants 1 to 5 have failed to adduce documentary and oral



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evidence to show that they were granted possessory right over the remaining 3 Acres and 91 Cents, whereas the plaintiff has proved the Will and has also succeeded in the Revenue proceedings initiated by him and the revision filed by the defendants 1 to 5 has been dismissed. The patta stands only in the name of the plaintiff till date and he is also paying kist for the same.

i) The plaintiff has proved his right over the property by the Will, patta and kist receipts. Since the patta proceedings ended in favour of the plaintiff by following the legal principle namely 'possession follows title', the plaintiff is found to be in possession of the property.

j) Since the gift deed executed in favor of Krishnan is only in respect of 4 Acres of land and the sale deed has been executed based on the patta in favor of the defendants 1 to 5, which has been subsequently cancelled by the Revenue Divisional Officer and the revision preferred by the defendants 1 to 5 before the District Revenue Officer is also got dismissed, the sale deed dated 17.05.2007 was executed by the defendants 1 to 5 in favour of the 6th defendant illegally as they do not have an title over the same. Hence, the sale deed dated 17.05.2007 standing in the name of the 6th defendant has to be declared as null and void.



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8. Aggrieved by the findings of the trial court, the 6th defendant, who claims to be the purchaser under the sale deed dated 17.05.2007, preferred a first appeal before the Sub Court, Kovilpatti in A.S.No.4 of 2016 by the judgment and decree dated 31.01.2019 passed by the Subordinate Judge, Kovilpatti. The lower Appellate Court also confirmed the findings of the trial court by dismissing the first appeal. Admittedly, as seen from the evidence available on record, both the courts below have rightly held that the Will executed in favour of the plaintiff has been proved by him as he proved the same in the following manner:

He has examined one of the attesting witness to the Will, who has deposed that only in his presence the other attesting witness also attested his signature and only in his presence the testator has signed the Will in a sound and disposing state of mind.

9. Only after giving due consideration to the fact that there are no suspicious circumstances for execution of the Will, the courts below have rightly held that the Will executed in favour of the plaintiff is a genuine Will and it was executed only in accordance with law and the plaintiff has



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proved the execution of the Will. The patta, which is already issued in favour of the defendants 1 to 5, has also been cancelled pursuant to the proceedings initiated by the plaintiff for its cancellation. The order of cancellation has also attained finality as seen from the order of the District Revenue Officer and other documents namely Ex.A.12 and Ex.A.15. The plea of limitation was never raised by the defendants in their written statement but they had raised the same only during the course of arguments in the suit. In answer, the same was also negated by the trial court as stated supra. The issues raised by the appellant in this Second Appeal including the substantial questions of law raised in the grounds of appeal have all been rightly considered by the courts below by rejecting the appellant/the 6th defendant's contention. There are no debatable issues of fact and law involved, which requires further consideration of this Court under Section 100 C.P.C.

10. In the result, there is no merit in this Second Appeal. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No



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To,

- 1.The Subordinate Court, Kovilpatti,
2. The I Additional Sub Judge, Tiruchirappalli.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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