



S.A(MD)No.614 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

S.A(MD)No.614 of 2023

1.Govindarajan

2.Susila

3.Padmavathi

4.Amsaveni

5.Amutha

...Appellants

-Vs-

Venkidasamy (died)

1.Rengasamy

2.Govindarajan

3.Renganayagi

4.Amasveni

5.Raghavan

6.Seenivasan

... Respondents



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the Subordinate Court, Kovilpatti, dated 22.01.2020 made in A.S.No.66 of 2012, confirming the judgment and decree made in O.S.No.200 of 2010, dated 08.08.2012, on the file of the District Munsif Court, Kovilpatti.

For Appellants : Mr.D.Srinivaragavan

For R2 : Mr.G.Gomathi Sankar

JUDGMENT

Challenging the concurrent judgements rendered in A.S.No.66 of 2012 on the file of the Sub Court, Kovilpatti, and in O.S.No.200 of 2010 on the file of the District Munsif Court, Kovilpatti, this second appeal is filed.

2. The appellants/plaintiffs filed a suit in O.S.No.200 of 2010 seeking the relief of permanent injunction against the respondents/defendants restraining the respondents from interfering with their possession and enjoyment of the suit



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property, for cost and other reliefs. The case of the appellants/plaintiffs is that the suit property originally belonged to the plaintiffs' father Venkataramanujam and he was issued patta in Patta No.875. He has been enjoying the suit property by paying kist. He died on 18.06.1999 leaving the plaintiffs as his legal heirs. The plaintiffs' mother predeceased the plaintiffs' father. After the death of father, the plaintiffs have been enjoying the suit property and they have been paying kist. They are also issued patta in patta No.6147. Defendants have no right in the suit properties. However, they tried to interfere with the plaintiffs possession in the suit property, resulting in filing of this suit.

3. The case of the plaintiffs is contested by the defendants stating that the property in Survey No.406/2 to extent of 7 acres 16 cents was originally belonged to one Swamy Naicker and Alagiri Naicker. They orally partitioned this property. 3.58 acres on the north was allotted to Samy Naicker and 3.58 acres in the south was allotted to Alagiri Naicker. Samy Naicker had Rangaramanujam, Venkatasamy and Ethiraj as his sons. After the death of Samy Naicker, they had orally partitioned the property. In the northern 3.58 acres in Survey No.406/2 eastern 1.79 acres was allotted to Rangaramanujan and western 1.79 acre was



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allotted to Venkatasamy Naicker. In the southern 3.58 acres in Survey No.406/2 Alagiri Naicker's legal heirs had effected partition. Eastern 1.79 acres was allotted to Namazhavar and western 1.79 acres was allotted to Venkatasamy Naicker. The first defendant's brother Rangaramanujam had sold 1.79 acres allotted to him to Sadagoparamanujam Naicker. On 25.07.1961, through document No.1357/1961 Sadagoparamanujam Naicker got sub division of this property in Survey No.406/2B1 and got separate patta and the remaining portion in Survey No.406/2 was sub-divided as 406/2B2. In the subsequent sub division of Survey No.406/2B2, the suit property in Survey No.406/2B2A was sub-divided in the name of second defendant Rangaswamy, Survey No.406/2B2B was sub-divided in the name of Venkataswamy and Survey No.406/2B2C was sub-divided in the name of Nammalvar. The suit property was given to the first defendant in a partition and he has been enjoying the suit property for a long time. The plaintiffs have no right in the property.

4. In the trial, on the side of the plaintiffs, PW1 was examined and Ex.A1 to A5 were marked. On the side of defendants, DW1 and DW2 were examined and Ex.B1 to Ex.B5 were marked. Ex.X1 to X.14 were also marked.



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5. On considering the oral and documentary evidence, the trial Court declined to grant the relief of permanent injunction prayed for by the plaintiffs and that was confirmed by the first appellate Court. In this background, this second appeal is filed.

6. It is the submission of the learned counsel for the appellants that the Courts below have not properly appreciated the oral and documentary evidence, especially, Ex.X1 to Ex.X14 and Ex.B2 documents. He would further submit that neither the first defendant nor his predecessor's name is found in Ex.X1 to Ex.X4. In Ex.X5 and Ex.B2, the appellants's grandfather Samy Naicker's name is found. Ex.X12 also contains the name of appellants' grandfather Samy Naicker. Appellants' claim is supported by Ex.A1, Ex.A2 and Ex.A4 and previous documents. Without considering these documents in a proper perspective, both the Courts have dismissed the suit filed by the appellants.

7. The learned counsel for the second respondent submitted that both the Courts have considered every document filed by both the parties and oral evidence, appreciated the documents and after careful analysis of the oral and



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documentary evidence, rightly dismissed the suit and that does not call for any interference. Thus, he prays for dismissal of the second appeal.

8. Considered the rival submissions and perused the records.

9. This is the case of the rival claim of title and possession in respect of the suit property. The suit property is a land measuring 0.58.0 hectare in Survey No. 406/2B2A in Nalatinpudur Village, Kovilpatti Taluk. The plaintiffs claimed the title and possession in respect of the suit property on the basis of Ex.A1 to Ex.A5, whereas the defendants claim right and title in respect of the suit property on the basis of Ex.B1 to Ex.B5 documents and Ex.X1 to Ex.X14 documents.

10. On perusal and consideration of these documents, the trial Court found that when it is claimed that plaintiffs' father had been enjoying the suit properties from 1961 on the basis of Ex.A1, the plaintiffs have not produced any document, especially, kist receipts, to show that their father was in possession and enjoyment of the suit properties from 1961. Of three receipts produced, one receipt does not belong to the suit property and two other receipts filed for showing enjoyment of



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45 years. On the other hand, Ex.X6 to Ex.X.14, Adangal Extracts, show that the suit property was cultivated by the first defendant. Ex.B3 series, Receipts show that the defendants produced kist receipts from 1968 to 1978 and then for 1986, 1983, 1994. Adangal extracts from 2002 to 2011, show that the defendants are in possession and enjoyment of the suit property. The defendants have also produced settlement jamapanthi chitta, dated 11.03.1976. The sale in favour of the Sadagoparamanujam in 1961 is entered in Ex.X5.

11. From the evidence of P.W.1, the trial Court found that P.W.1 was not in a position to say in whose name the patta was issued in respect of the suit property prior to UDR scheme. He admitted that he has not produced any document to show that in whose name, the suit property was entered in the revenue records prior to UDR scheme. Thus, considering the documentary and oral evidence produced in this case, the learned Trial Judge found that the case of the defendants is acceptable with regard to title, possession and enjoyment of the suit properties than the case of the plaintiffs and dismissed the suit. This finding was also confirmed by the First Appellate Court. When a specific finding of fact was recorded with regard to oral and documentary evidence produced in this case



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and that was confirmed by the first appellate Court, the ground taken by the learned counsel for the appellants that both the Courts below have not considered the evidence properly, without substantiating it, cannot be accepted. This Court is of the view that both the Courts below have properly and rightly appreciated the oral and documentary evidence and dismissed the suit filed by the plaintiffs and this finding does not call for any interference from this Court.

12. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd.*, 1962 reported in AIR 1962 SC 1314, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
4. The question is not free from difficulty and calls for discussion of alternative views.

13. In the case before hand, the appellants have not made out any of the



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aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

14. In fine, this Second Appeal is dismissed confirming the judgments of the Courts below. No costs.

19.10.2023

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

- 1.The Subordinate Judge,
Kovilpatti.
- 2.The District Munsif,
Kovilpatti.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G. CHANDRASEKHARAN, J.



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