



SA(md)No.99 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2022

Pronounced on : 06.01.2023

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.99 of 2014

Padmavathi ... Appellant/Respondent/Plaintiff

Vs

1.Chellathai
2.Malisraj
3.Ebanraj ... Respondents/Appellants/Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 11.09.2012 made in A.S.No.7 of 2008 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree dated 11.10.2007 in O.S.No.7 of 2005 on the file of the Sub Court, Sankarankoil.

For Appellant : Mr.V.Meenakshi Sundaram

For R1 & R3 : Mr.K.V.Sudhir Babu

R2 : Party-in-Person



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JUDGMENT

The plaintiff, who was successful in a suit for declaration of her title and for ancillary relief of injunction over the suit property in O.S.No.7 of 2005, having tasted a reversal in fortune in A.S.No.7 of 2008 which was filed by the defendant, is the appellant herein.

2. The case of the plaintiff is:

- Sy.No:65/8 in Vadanathampatti Village has a total extent of 2.76 acres. In this a block of 2.11 acres in S.No.65/8A1 is described as the suit-property.
- The plaintiff claims title to 2.11 acres from two different sources.
- On 20.12.1954, a certain Kovil Pillai, the paternal grandfather of the plaintiff purchased 88 cents under Ext.A.1 = Ext.B.4 sale deed.
- Kovil Pillai had two children namely Anthony and Savariammal. Earlier on 07.09.1954, Anthony died leaving behind him surviving



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his wife Pushpam and his daughter, the plaintiff. About 1960, Kovil Pillai died, whereupon the 88 cents that he had purchased under Ext.A.1= B4 devolved on his daughter-in-law Pushpam and grand-daughter Savariammal. Since the mortgage was not redeemed, by efflux of time, the mortgagees became the absolute owners of this block of 1.23 acres.

- The total extent of 2.11 acres (88 cents + 1.23 acres) was jointly enjoyed by Pushpam, Savariammal. Later in a family partition, the entire property came to be allotted to the share of Anthony's branch since Savariammal was allotted some other property.
- While Pushpam became entitled to 2.11 acres as stated above, the remaining 65 cents in the said survey field is held by one Elangani and few others and a joint patta under patta No: 2552 was issued to them.
- While so, on 07.12.2004 vide Ext.A.2 settlement deed Pushpam had settled the suit property in favour of her daughter, the plaintiff herein.

When the plaintiff faced obstruction to her title from the defendants, she



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laid the suit for declaration of the title etc.

3. Resisting the suit, the defendants have pleaded in the written statement as below:

- The entire 2.76 acres in Sy.No:65/8 originally belonged to Samuel, the vendor in Ext.A1 = Ext.B4 sale deed. It is true that Kovil Pillai had purchased 88 cents under Ext.A.1 = Ext.B.4.
- However, contrary to the assertion of the plaintiff, Kovil Pillai had four children and not two. They were: (a) K.S.Anthony alias Periya Anthony (b) Therasammal, (c) Savariammal; and (d) Anthony alias Chinna Anthony. Plaintiff is the daughter of Chinna Anthony.
- While so, on 21.06.1951, under Ext.B-3, Peria Anthony and his sister Savariammal had obtained an otti of 32 cents from Samuel, but the property was enjoyed only by Periya Anthony. At no point of time Chinna Anthony, the father of the plaintiff ever enjoyed this property.
- Now, Peria Anthony became the title holder of 2.48 acres in S.No: S.No.65/8A1, from different sources, and they are as below:



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- Prior to his death on 10.05.1962, Kovil Pillai had orally sold the 88 cents that he had purchased under Ext.A.1 to his son Periya Anthony as the latter took adequate care of his father in his old age.
- 32 cents vide Ext.B.3 *otti* deed, dated 21.06.1951.
- This apart, some time in 1960 Periya Anthony had orally purchased another portion measuring 1.28 acres in the same survey field from Karuppasamy, Arumugam, Subbaiah, Oyilan, Soundara Pandiyan.
- At no point of time Chinna Anthony or his wife Pushpam ever enjoyed any property in the suit survey field and at all times the property was owned and enjoyed only by Periya Anthony. This will also be known from a Power of Attorney document dated 29.07.1967 (marked Ext.B29 before the first appellate court). In this backdrop, Pushpam's name was clandestinely included in the patta during UDR scheme.
- While so on 14.11.1980 under Ext.B.2 sale deed, Periya Anthony had sold the entire 2.48 acres that he had obtained from three



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different sources as described above to a certain Samuel (not the vendor of Kovil Pillai under Ext.A.1) under whom the defendants claim.

4. The dispute went to trial. During trial, the plaintiff examined herself as P.W.1 and she examined two other independent witnesses as P.W.2 and P.W.3. For the defendants, the first defendant examined herself as D.W.1 and they examined D.W.2 to D.W.3 all of whom are independent witnesses. The plaintiffs have produced Exts.A.1 to A.35 of which Exts.A1 and A.2 have already been introduced in evidence. Substantial number of rest of the documents are revenue records. The defendants on their side have produced Ext.B.1 to Ext.B.19 of which Ext.B.2 to Ext.B.4 have been referred to in the facts-narration above.

5.1 The issue now boils down to understanding the number of children Kovil Pillai had, tracing the title of both the sides, and to ascertain which of the conflicting cases of the parties holds greater probability.



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5.2. After appreciating the evidence, the trial court appeared to have found that the case as put forth by the plaintiff was more probable and decreed the suit. The suit was taken in first appeal in A.S.No.7 of 2008 by the defendants. Before the First Appellate Court, the defendants produced additional documents under Order 41 Rule 27 C.P.C and that came to be marked as Ext.B.20 to B.33 and allowed the appeal. This was challenged by the plaintiff in S.A(MD)No.487 of 2011. On 02.11.2011, this Court allowed the appeal and remanded the matter back to the First Appellate Court granting liberty to the defendants to prove the additional documents formally. After completion of procedural ritual, the First Appellate Court yet again allowed the appeal. The line of reasoning of the first appellate court is:

- P.W.1 in her cross examination has not denied the defendants' case that Kovil Pillai had four sons, but merely says that she does not know it. Indeed she had not proved that Kovil Pillai did not have four children.
- Contrary to the pleadings of the plaintiff that her father Chinna Anthony along with his sister had obtained 1.23 acres in otti ,



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Ext.B.3, dated 21.06.1951 covers only 32 cents, and the balance extent is not explained.

- The plaintiff though had pleaded that 65 cents is owned by one Elangani and five others, has not let in evidence to prove it.
- Under Ext.A7 = Ext.B2 sale deed, dated 14.11.1980, Anthony had sold 48 acres to Samuel. If it is so, what is there for Pushpam to obtain on his demise.

6. Aggrieved by the decree of the first appellate court, the plaintiff is before this Court. This Second Appeal is admitted for considering the following substantial questions of law:

- When it is an admitted fact that the father of the appellant namely, Anthony is the son of Kovil Pillai and the respondent has failed to establish their case that K.S.Anthony is another son of Kovil Pillai and thus establish to her title in respect of 1 acre and 22 cents out of 2 acres 11 cents and established her possession by producing Exs.A.5, A.6 and A.9 to A.35 and by examining P.W.3 Village Administrative Officer and elicited admission of DW1 in her cross examination that the revenue records namely, patta, adangal etc., in respect of the suit properties stood in the name of the mother of the plaintiff,*



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whether the 1st appellate court failed to invoke Section 110 of the Indian Evidence Act and declare the title of the appellant in respect of the suit properties against the respondents and hence warrants interference by this Hon'ble Court?

ii) Whether the 1st appellate court has failed to apply the principle of law that even in the absence of better title establishment of possession is itself evidence of title in such person is entitled to get a declaration of title against a person who has not established title as well as possession which resulted in arriving erroneous conclusion that the appellant is not entitled to get declaration and therefore warrants interference?

7. The learned counsel appearing for the plaintiff/appellant made the following submissions:

- The chief plank of the defendants case is that there was a certain K.S.Anthony @ Periya Anthony and that he was born to Kovil Pillai. While the defendants do not dismiss plaintiff's father Anthony as a son of Kovil Pillai, they bring in someone by name K.S.Anthony alias Periya Anthony also as a son of Kovil Pillai. To establish the same, they have initially produced Ext.B.14 to Ext.B.



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18, not one of which was useful to them to establish the relationship between the alleged K.S.Anthony with Kovil Pillai. The only document which may have some relevance is Ext.B.19 and this is the certified copy of the power of attorney document which is said to have been executed by K.S.Anthony alias Periya Anthony in favour of his wife Annathai dated sometime in 1967. This document introduces K.S.Anthony as the son of Kovil Pillai, but it is only a self-serving and cannot be considered as a proven fact.

- Subsequently, after remand by this Court, the defendants have produced certain additional documents, of which Ext.B.20 to Ext.B.22 and Ext.B.28 were considered as critical by the first appellate Court. They pertain to the judgment, decree and extract of the suit register of a suit in O.S.No.513 of 1967 on the file of the District Munsif Court, Kovilpatti. This suit was laid by Annathai, the wife of K.S.Anthony, which she had instituted on the strength of Ext.B.19, the power of attorney against the plaintiff's mother, Pushpam. These documents were not pleaded in the



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written statement and hence can be given no credence.

8. Per contra, the second defendant, who appears as party in person, and the learned counsel for the defendants 1 and 3 who respectively are the mother and brother of the second defendant, submitted that:

- Ext.B.20 to Ext.B.22 are merely evidentiary facts to prove the material fact that K.S.Anthony was the son of Kovil Pillai, and hence need not be pleaded. At the end of the day, the defendants are only purchasers from K.S.Anthony and they could not be in the know of things when the suit was defended, but it came to light much later and hence these documents were produced to substantiate one of the limbs of their defence that there existed a certain K.S.Anthony, one of the sons of Kovil Pillai. Therefore, Ext.B.20 to Ext.B.22 cannot be ignored on the ground that they have not been pleaded.
- Turning to Ext.B.20 to Ext.B.22, Ext.B.20-the suit register extract of O.S.No.513 of 1967, the quintessence of the suit has been re-produced. It says that the plaintiff's husband and the first



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defendant's husband were brothers. Ext.B.21-judgment shows that the plaintiff's mother, who was the defendant in O.S.No.513 of 1967, had submitted to the decree. Given the fact that the plaintiff's mother though had an opportunity to deny that the plaintiff in that case was not the wife of her husband's brother, still appears to have chosen not to contest it.

- So far as Ext.B.29 is concerned, this document must be read in conjunction with Ext.B.11 and Ext.B.19 = Ext.B.29, power of attorney document. On the strength of Ext.B.19 document, Annathai sold a certain property vide Ext.B.11-sale deed dated 09.01.1970. In this connection, this very plaintiff had executed Ext.B.28 document in favour of Annathai giving an undertaking that she would not object to the said sale. In Ext.B.28 document, plaintiff has described Periya Anthony as her paternal uncle. This apart, there is another set of documents that will also fortify the existence of K.S.Anthony, and they are Ext.A.3 and Ext.B.27. Ext.A.3 is the Death Certificate of the plaintiff's father Anthony, as per which, he had died on 07.09.1954. Subsequent to his death,



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Kovil Pillai had sold some property of his to his son Anthony under Ext.B.27, sale deed dated 11.11.1954. In this document, Kovil Pillai describes the purchaser Anthony as his son. Indeed, this sale deed has provided the cause of action for O.S.No.513 of 1967.

9.1 On appreciating the rival submissions, this Court finds the plaintiff's case in immense difficulties. The basic premise of the plaintiff's case is that Kovil Pillai had only two children, and that the property that he had purchased under Ext.A1 = Ext.B4 devolved on her mother Pushpam and her father Anthony, who pre-deceased Kovil Pillai. Could this be true is the moot point, since the defendants introduce a certain Anthony alias Peria Anthony, another son of Kovil Pillai, and shifts their right to him. As to the existence of Anthony alias Peria Anthony, this Court finds the submissions made by the defendants convincing. Since these submissions are self-evident, this Court does not want to engage in it more.



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9.2 Turning to the plaintiff's prayer for declaration of her title over 2.11 acres is concerned, she has not established her entitlement atleast to 1.23 acres. So far as 88 cents which Kovil Pillai had purchased under Ext.A1 = Ext.B4 is concerned, the pleadings of the defendants indicate that this property was orally sold by Kovil Pillai to Anthony. The details, more particularly, the period of the sale is not indicated. It may be stated that Ext.A1 under which this property was purchased by Kovil Pillai is dated in December, 1954, for a consideration of Rs.100/- under a registered sale deed. If this is the basis, and unless it is established that Kovil Pillai chose to sell the property for the value less than Rs.100/-, it would be nigh difficult for this Court to accept that Kovil Pillai could sell the property orally to Peria Anthony. That however, does not advance the case of the plaintiff, and if at all any, plaintiff would be only entitled to a fractional share in 88 cents and not the whole of it. But, that aspect is alien to the scope of the present litigation, and such entitlement if any, of the plaintiff to the property covered under Ext.A1, may have to be decided only when it is required to be decided. For the present, this Court can come to a safe conclusion that in the eventuality of Ext.A1 sale



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deed is disbelieved, the plaintiff can only be entitled to a fractional share and not the whole of it.

9.3 The next issue is whether 32 cents covered under Ext.B3, Otti document, is in favour of Peria Anthony or Chinna Anthony. Here it may be relevant to mention that the original otti document was produced by the defendants and necessarily the Court has to believe that one of the mortgagees under the document must be Peria Anthony.

10. For the foregoing reasons, this Court is satisfied that the plaintiff's case has to fail due to the internal contradictions in evidence and the weakness they produce. This Court is now left with little option, but to dismiss this appeal and confirm the judgment of first appellate Court in A.S.No.7 of 2008 on the file of the Principal District Court, Tirunelveli. No costs.

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Speaking Order / Non-speaking order

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To:

1.The Principal District Judge, Tirunelveli.

2.The Sub Judge, Sankarankoil.

3.The Section Officer

VR Section, Madurai Bench of Madras High Court, Madurai.

N.SESHASAYEE, J.

CM/ssb

Pre-delivery Judgment in
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