



S.A(MD)No.289 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.289 of 2017

Savadammal

... Appellant

Vs.

1. C. Ramasamy

2. R.Bala Ramakrishnan

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 06.06.2015 passed in A.S.No.43 of 2014 on the file of the Additional District Cum Sessions Court, Dindigul, Dindigul District, reversing the Judgment and Decree, dated 16.07.2014 passed in O.S.No. 192 of 2012 on the file of the Sub - Court, Vendasandur, Dindigul District.

For Appellant : Mr.G.Gomathi Sankar

For Respondents : Mr.R.Ramadurai

JUDGMENT

This Second Appeal is filed against the Decree and Judgment, dated 06.06.2015 passed in A.S.No.43 of 2014 on the file of the Additional District



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Cum Sessions Court, Dindigul reversing the Judgment and Decree, dated 16.07.2014 passed in O.S.No.192 of 2012 on the file of the Sub-Court, Vedasandur, Dindigul District.

2. The Plaintiff is the Appellant herein and the Defendants are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The suit in O.S.No.192 of 2012 was filed by the plaintiff for Declaration and Injunction. The case of the plaintiff is that the 1st defendant has executed a sale deed, dated 17.08.1981 and sold the properties mentioned thereunder. Based on the sale deed the plaintiff had obtained patta and is in possession and enjoyment of the said land. The contention of the plaintiff is that the defendants had entered wrong survey numbers in the sale deed. The plaintiff had sold 0.87 $\frac{3}{4}$ cents of land in S.No.22/2, but the same belongs to some other person. In the sale deed it is stated that Well is situated in S.No.27/3A but there is no Well in the said survey number. But the plaintiff is in possession of 18 cents land situated in S.No.27/3A. In the said sale deed it is stated that the 1st defendant



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has sold 0.62 cents of land situated in S.No.23/4, but the plaintiff is in possession of 2 acres 1 cents of land in the S.No.23/4. But the plaintiff is having patta for the said lands. The plaintiff is paying kist to the said lands from the date of sale deed.

4. The plaintiff and the defendants are in joint possession and enjoyment of the Well situated in S.No.27/3B, but in the aforesaid sale deed the 1st defendant had not showed the said land, but the 1st defendant had handed possession of the land in S.No.27/3B and the plaintiff is in enjoyment of the said land. The Well situated in S.No.27/4C and the water available in the Well is utilized for the aforesaid lands, but the 1st defendant lied that the Well is situated in S.No.27/3 and sold the land situated in S.No.27/3. The 1st defendant is using the water situated in S.No.27/4C by laying pipelines and this fact came to the knowledge of the plaintiff on a later date. The plaintiff had changed patta for 2.01 acres for lands situated in the S.No.23/4A from the date of sale deed dated 17.08.1981 and hence the plaintiff is claiming adverse possession against the defendants. Now the 1st defendant had executed a sale deed dated 21.05.2004 in favour of the 2nd defendant, who is the son of 1st defendant, thereby had sold 50¼ cents of land in S.No.23/4A and the defendants are trying to dispose the land



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which the plaintiff is in possession adversely against the interest of the defendants. Hence the suit is filed for declaration and injunction.

5. The Trial Court has allowed the suit as far as the item Nos.1, 2 and as far as item No.4 for the land $25 \frac{3}{4}$ cents and as far as item No.6 the plaintiff is entitled to $\frac{1}{4}$ th share in the Well. And the suit was dismissed as far as the items Nos.3 and 5 and item No.4 the remaining $25 \frac{3}{4}$ cents, item No.6 the land of $3 \frac{1}{2}$ cents. Aggrieved over that part of the suit which was allowed in favour of the plaintiff, the defendants have preferred an appeal and the Appellate Court has partly allowed the Appeal. The Appellate Court had held that the plaintiff is entitled to the decree of declaration and injunction in respect of undivided 0.62 cents in S.No.23/4A (suit 1st item), $0.25 \frac{3}{4}$ cents in S.No.35/2 (suit 4th item) and $\frac{1}{4}$ share in the Well and motor fitted therein in S.No.27/4C (suit 6th item) and dismissed the suit as far as the item Nos.2, 3 & 5. Aggrieved the said findings passed by the Appellate Court, the plaintiff has preferred the present Second Appeal.



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6. The Learned Counsel appearing for the plaintiff / appellant submitted that as far as item No.6 is concerned, the 1/4th share in the Well was granted to the plaintiff, which is as per the sale deed and the plaintiff is not aggrieved over the said item No.6. As far as the item No.4 is concerned the plaintiff is satisfied with 0.25 ³/₄ cents. The plaintiff cannot be aggrieved over the item Nos. 3 and 5 since the said properties were not sold to the plaintiff. As far as item No.2 the plaintiff is entitled to 1/4th share in the undivided land and 1/4th share in the Well as per the sale deed. Therefore, the dispute is only to item No.1 alone. Therefore, the present second appeal is preferred for the item No.1 alone.

7. The substantial question of law that was raised in the second appeal are as follows:

a. Whether the suit is bad for non-joinder of necessary parties?

b. Whether the Courts below are right in dismissing the claim of the plaintiff as far as item No.1, when the said land is in adverse possession against the defendants.



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8. The property originally belongs to one Chikkana Goundar and Nagappa Gounder, who are brothers. The plaintiff is the wife of Nagappa Gounder. The said Chikkana Goundar was married and has one son and two daughters, namely Ramasamy and Pitchammal and Nagammal. The said Ramasamy is the 1st defendant herein. The said Chikkana Goundar and Nagappa Gounder are having share in the properties. From the total extent of 2.48 cents in S.No.23/4, the said Nagappa Gounder was allotted 1.24 cents. The remaining 1.24 cents belongs to Ramasamy, Pitchamal and Nagammal. It is seen that that the 1st defendant Ramasamy and one of the daughter Nagammal have executed the sale deed, dated 17.08.1981, in favour of the plaintiff. However, the plaintiff has filed the suit against the said Ramasamy alone but had not arrayed the said Nagammal as one of the parties. Therefore, this Court is of the considered opinion that the suit is bad for non-joinder of parties and the 1st substantial question of law is in favour of the defendant.

9. Now this Court proceeds to discuss about the next substantial question of law. The case of the plaintiff is that the 1st defendant had taken money for the entire extent of the land and that is why the defendant had permitted to



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change the patta in the plaintiff's name. Hence the plaintiff contention is that when the defendant had permitted to change patta, when the plaintiff had changed patta with the knowledge of the defendant, then the plaintiff is entitled to adverse possession of the property. The defendant denied the statement of the plaintiff and submitted that the defendant had never given any such permission. It is seen the land in S.No.23/4 belongs to Chikkana Goundar, his son and his two daughters each having 1/4th share. The plaintiff had purchased from the son Ramasamy and one daughter Nagammal to an extent of 62 cents. When the remaining portion belongs to other share-holders, then the defendant has no right to permit the plaintiff to change patta for the entire extent of land and consequently the adverse possession cannot be claimed. Since adverse possession ought to be against the real owner, in the present case when the other share-holders are the real owners and the other share-holders had not granted any permission to change patta, then the claim of the plaintiff is patently incorrect and the plaintiff's claim over and above 62 cents is illegal. Further the alleged promise by the said Ramasamy is incorrect and further there is no evidence to prove the same.



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10. Further it is seen when the plaintiff has changed the Patta over and above 62 cents, notice was not issued to the defendants. Hence the patta was changed behind the back of the defendants. Furthermore, the contention of adverse possession ought to be based on detailed pleading and proof. In the present case there is bereft of any details for adverse possession and the pleading is only bare without any details. To prove adverse possession the plaintiff ought to state from which date the defendant is having knowledge and other ingredients ought to be stated in the plaint. The contention stated in the plaint is extracted hereunder:

....

“வாதி பிராது சொத்துக்களை பிரதிவாதிகளுக்கு
தெரிய எவ்வித ஆட்சேபனையும் இன்றி வெளிப்படையாக 1981
வருடம் முதல் இன்று வரை அனுபவித்து வருகிறார்.”

Except this statement there is no pleading at all. Therefore, this Court is of the considered opinion that the claim of the adverse possession cannot be entertained.



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11. The Learned Counsel appearing for the plaintiff submitted that the sale deed was acted upon and the patta was issued based on the sale deed and in such circumstances the defendant cannot deny the possession of the plaintiff and had relied on the Judgment passed in ***A.S.No.185 of 2006, dated 30.11.2011 in the case of R.Selvaraj Vs. V.P.Periasamy.*** The relevant portion is extracted hereunder:

“23. The respondent/Defendant though pleaded that he borrowed a sum of Rs.2,00,000/- from the Appellant/Plaintiff and executed Ex.A.3, Power of Attorney Deed as a security, it was not substantiated and proved by any manner. Further Ex.A.3, Power of Attorney Deed was in force at the time of execution of Ex.A.4, Sale Agreement and at the time of execution of Ex.A.5 registered Sale Deed. After the execution of Ex.A.5, Sale Deed, the Appellant/Plaintiff also got his name included in the patta by Ex.A.6 proceedings which also proves that the Sale Deed was acted upon. The Trial Court erroneously came to the conclusion that Ex.A.5, Sale Deed was not acted upon.”

The facts stated in the aforesaid judgement is entirely different. The said judgment was rendered while deciding the money transaction and in lieu of the same power of attorney was executed and consequently sale deed was executed. In such circumstances the court decided whether the sale is executed as stated by



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the parties and the sale deed was acted upon. Therefore, this Court is of the considered opinion that the said judgment is not applicable to the present facts of the case. Further it is a settled preposition of law that the Patta will not confer title and based on the change of patta, no rights would accrue to the plaintiff.

12. For the reasons stated above, the plaint filed by the Plaintiff cannot be entertained. The Appellate Court has rightly rejected the claim of the plaintiff. Therefore, confirming the Judgment, dated 06.06.2015 passed in A.S.No.43 of 2014 on the file of the Additional District Cum Sessions Court, Dindigul, this Court is inclined to dismiss the second appeal and accordingly dismissed. No costs.

Index : Yes / No
Internet : Yes
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To

1. The Additional District Cum Sessions Court,
Dindigul, Dindigul District.
2. The Sub Court,
Vedasandur,
Dindigul District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
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