



S.ANo.1160 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.N.Krishnasamy Naidu (died) ... Plaintiff/Respondent/Appellant
2.K.Sundararajan
3.K.Namperumal
4.K.Gopalsamy
5.K.Srinivasan
6.K.Andal ... Appellants

(A2 to A6 are brought on record as Legal heirs of the deceased A1 as per order dated 01.11.2018 in M.P(MD).Nos.1 to 3 of 2010 in SA.No.1160 of 2000)

-Vs-

1.Andal Ammal (died)
2.R.Venugopal ... Defendants/Appellants/Respondents

(R1-died, Memo USR-4460, Memo recorded as R1-died and R2 is the legal heir of the deceased R1, who is already on record as per order dated 01.11.2018)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 19.12.1997 made in A.S.No.129 of 1996 on the file of the learned Principal Subordinate Judge, Srivilliputhur, in reversing the judgement and decree dated 04.12.1995



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made in O.S.No.32 of 1995 on the file of the District Munsif Court,
Sivakasi.

For Appellants : Mr.P.Athimoolapandian
for Mr.N.Damodharan
For Respondents : Mr.D.P.Sundararaj
for Mr.A.Sivaji (for R2)
R1-died

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit is for declaration of title and permanent injunction in respect of a vacant site. The suit was decreed by the trial Court and the findings of the trial Court was reversed by the First Appellate Court. Hence, the unsuccessful plaintiff is before this Court.

2. According to the plaintiff, the suit property was allotted to the share of his father and his brothers in a family partition that had taken place on 06.06.1930. It was subsequently confirmed by a registered partition deed dated 30.04.1992. It was averred in the plaint that the suit property was referred to in the boundary description of the first respondent/defendant's title deed, Ex.A4 and also in the sale deed in favour of the first respondent's daughter-in-law. It was further averred by the



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plaintiff/appellant that the first respondent wanted to purchase the suit property from the plaintiff/appellant, but the plaintiff/appellant refused to sell the property and aggrieved by the same, the respondents tried to interfere with his possession and enjoyment of the suit property. Therefore, the plaintiff was constrained to file a suit for declaration of title and permanent injunction.

3. The suit was resisted by the respondents/defendants by filing a written statement, wherein, the title as well as the possession of the suit property was specifically denied by the respondents. It was further averred in the written statement that the suit property is a 'Village Natham' and whoever in effective possession and enjoyment of the same is entitled to title. The respondents also stated that the property on immediate north of suit property was purchased by the first respondent/first defendant and ever since from the date of purchase, she had been using the suit property as a front yard of her house. It was also submitted that there was an opening in the southern wall of the first respondent's house leading to the suit property. It was also submitted that except the suit property there was no other access to the first respondent's house from the road. The



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respondents also asserted hostile possession over the suit property and pleaded adverse possession.

4. The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the plaintiff/appellant herein proved his title over the suit property based on Ex.A3, partition deed in the family of plaintiff/appellant, under which, the suit property was allotted to the share of plaintiff/appellant's father. The trial Court also relied on the reference about the suit property in the boundary description of Ex.A4 and Ex.A5 and consequently, came to the conclusion that the plaintiff/appellant had proved his title over the suit property. The suit property being a vacant site the trial Court came to the conclusion that the plaintiff/appellant proved his title and possession over the same and granted decree as prayed for. Aggrieved by the same, the defendants/respondents filed an appeal in A.S.No.129 of 1996 on the file of the Principal Subordinate Court, Srivilliputhur. The First Appellate Court on the basis of the admission made by the plaintiff/appellant as P.W.1 with regard to the right of access available to the first respondent/first defendant came to the conclusion that the suit property is



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the only access available to the first respondent/first defendant to reach her house and consequently, found the plaintiff/appellant failed to prove his exclusive possession. As far as the title of plaintiff/appellant is concerned, the First Appellate Court found that the contents of Ex.A4 and Ex.A5 were not proved by examining the attester to the document and therefore, the trial Court's decision with regard to the title based on the boundary description found in Ex.A4 and Ex.A5 was not sustainable. Therefore, the First Appellate Court has set aside the findings of the trial Court and allowed the appeal. Aggrieved by the same, the unsuccessful plaintiff is before this Court.

5. After hearing the arguments of the learned counsel for the appellant, this Court has formulated the following substantial questions of law:-

(i) Whether the judgment passed by the First Appellate Court is vitiated by misreading of Ex.A3, Ex.A4 and Ex.A5?

(ii) Whether the judgment of the First Appellate Court vitiated by non-consideration of materials, evidence available on record?



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6. Heard the arguments of the learned counsel for the respondents on the questions of law formulated by this Court, perused the typed set of papers and other records.

7. The plaintiff claimed right over the suit property under Ex.A3, which is a partition deed in the family of plaintiff. The suit property was allotted to the share of plaintiff's father in Ex.A3. A perusal of partition deed, Ex.A3, would make it clear that the III Schedule in the partition was allotted to the share of Krishnasamy Naidu. The suit property is mentioned as II item in the III Schedule. Therefore, there is no doubt that the suit property was allotted to the share of plaintiff's father in Ex.A3, partition deed, dated 30.04.1932. The same was fortified by the boundary description in Ex.A4 and Ex.A5. Ex.A4 is a sale deed in favour of first respondent in respect of the property situated on the north of suit property, wherein the vendor of first respondent namely the wife of the plaintiff's father's brother (Ramanujam) described the suit property as property of her sharers. The reference about the southern boundary in Ex.A.4 is mentioned as follows “எங்கள் வகையறா காலி நிலத்திற்கு வடக்கு”.



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8. Ex.A5 is a sale deed in favour of first respondent's daughter-in-law Jayaramu Ammal by one Popalsamy Naiker, which is relating to property situated on the western side of the suit property. Even in the boundary description found in Ex.A.5, the eastern boundary was mentioned as property of plaintiff. Therefore, the boundary description found in Ex.A4 and Ex.A5 corroborates the fact that under Ex.A.3 the suit property was allotted to the share of plaintiff. The First Appellate Court in its judgment observed that the contents of Ex.A4 and Ex.A5 were not proved by examining the attesor to the said document. The said approach of the First Appellate Court is not correct in view of the fact that Ex.A.4 is a document in favour of first defendant, who is a party to the suit. Ex.A.5 is a document in favour of daughter-in-law of the first defendant. The Ex.A.4 was dated 03.05.1950 and Ex.A.5 was dated 13.07.1976. Ex.A.4 was marked through P.W.1 when he was examined on 03.11.1995. When the document was marked before the Court, it was 30 years old document, therefore, presumption attached to the old document is available for the same. Hence, the same need not be proved by examining the parties to the document.



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9. As far as Ex.A5 is concerned, though the said document was dated 13.07.1976, it cannot be treated as old document. When Ex.A5 was tendered in evidence, no objection was made with regard to the manner of proof and therefore, it is not open to the other side to contend that the Ex.A5 was not proved in the manner known to law by examining the attesting witness. Therefore, the First Appellate Court ought not to have rejected Ex.A4 and Ex.A5 on the ground those documents were not proved in the manner known to law by examining the competent witnesses.

10. In the light of the discussions made above, this Court has come to a conclusion that the appellant/plaintiff had proved his title over the suit property. Admittedly, the suit property is a vacant site and therefore, the possession of the appellant has to be presumed as he succeeded in proving his title. It is well settled law that the possession follows title in respect of vacant site. Therefore, I have no hesitation in holding that the appellant also succeeded in proving his possession, however, the First Appellate Court while reversing the findings of the trial Court relied on certain admission made by the appellant as P.W.1. A perusal of evidence of P.W.1, would make it clear that he categorically



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admitted that the main entrance of the first respondent's house is facing suit property on the southern side of his house. Therefore, it is argued by counsel for respondent that the suit property had been used by the first respondent as an access to reach her house from the road, which lies on the southern side of the suit property. However, in the case on hand, though the first respondent raised a plea of adverse possession and easementary right, she has not come up with any counter claim seeking declaration of her easementary right. Therefore, it is made clear that subject to the right of first respondent to seek declaration of his easementary right in the manner known to law, the appellant is entitled to declaration of his title and injunction as prayed for. The first respondent is given liberty to file an appropriate suit seeking declaration of her easementary right, if so advised.

11. In fine,

(i) the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court.

(ii) The judgment and decree passed by the trial Court is restored.



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(iii) The first respondent is granted liberty to file an appropriate suit seeking declaration of her easementary right, if so advised.

In the facts and circumstances of the case, there shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Rmk



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S.SOUNTHAR, J.

Rmk

To

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

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