



S.A.No.1886 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.1886 of 2003

1.Kaliammal

2.Malliga

3.Ramaiah

4.Murugan

5.Kaliappan

... Appellants

-Vs-

S.Ramaiah

... Respondent

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 08.09.1999 made in A.S.No.103 of 1997 on the file of Principal Subordinate Judge, Tenkasi in reversing the judgment and decree dated 12.09.1997 made in O.S.No.111 of 1996, on the file of District Munsif Court, Senkottai.

For Appellants : Mr.V.Shathurthi Raja
for Mr.R.Govindaraj

For Respondent : Ms.R.J.Roshini
for Mr.D.Srinivasaragavan



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JUDGMENT

Aggrieved by the judgment and decree passed by the first appellate Court viz., the Principal Sub Court, Tenkasi in A.S.No.103 of 1997, dated 08.09.1999, the legal heirs of the first defendant viz., Kaliasammal, his wife and children have filed this second appeal.

2. Parties are indicated as per their litigative status before the trial Court.

3. One S.Ramaiah, S/o.Shanmuga Pandian filed a suit for declaration of title and for consequential permanent injunction in respect of the suit property viz., a plot situated at Senkottai, Kalasami Kovil Street in Re-survey No.L.3 171 sq.mtr., 62 mtr., L.3.170 sq.mtr., 55, against Kalaperumal, S/o. Aandi Pandian.

4. According to the plaintiff, the suit property and other property viz., Old Survey No.339/13 (Re-survey No.567/9), 60 cents at Senkottai originally belonged to Raman Pandian. Raman Pandian had two sons viz., Shanmuga Pandian and Aandi Pandian (the first defendant's father).



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Easwari is the wife of Aandi Pandian. Aandi Pandian and his wife had only son Kalaperumal, the defendant herein. The plaintiff is the only son of Shanmuga Pandian and Kammal. Through an oral partition, the suit property was allotted to the share of plaintiff's father Shanmuga Pandian and he was in possession and enjoyment of the suit property along with other properties, he got through partition. The plaintiff further claims that for the past 12 years, as his father was not mentally sound, not found and for the above 12 years, his whereabouts are not known. Therefore, the plaintiff is in possession and enjoyment of the suit property and also paying kist, besides enjoying the suit property. On 07.07.1994, he executed a mortgage deed in favour of Gomathi, W/o. Paramasivam. Mean while, he received a notice from Senkottai Municipality that the defendant has given an application for name change stating that his father sold the suit property to his brother's wife Easwari Aandi Pandian. The said sale deed will not bind the plaintiff. The plaintiff, as to the knowledge of the defendant, has been in possession and enjoyment of the suit property for more than 12 years and hence, he has claimed title by adverse possession. Taking advantage of the fact that the property stands



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both the plaintiff and defendant name, the defendant seeks to interfere with the possession of the plaintiff. Hence, the suit for declaration of title and for consequential injunction was filed.

5. Counteracting to the contentions of the plaintiff, the defendant claimed that the suit property along with the other properties were sold by the plaintiff's father Shanmuga Pandian in favour of his mother Easwari Aandi Pandian in the year 1959. Since then the suit property had been in possession and enjoyment of his mother Easwari. Tax was demanded as per the records of the Municipality. The suit property stands both in the name of plaintiff and the defendant. As it was objected by the defendant in the year 1995, the plaintiff name was deleted on 18.04.1996 and thereafter, property tax was levied only in the name of defendant and he has been making the payment of the same.

6. The trial Court, upon hearing both sides and upon consideration of oral and documentary evidence, concluded that the plaintiff has not proved that the suit property belongs to him and he is in



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possession of the suit property and chosen to dismiss the suit. Aggrieved, the plaintiff preferred an appeal before the Principal Sub Court, Tenkasi in A.S.No.103 of 1997 and after hearing both sides, the first appellate Court concluded that the suit property is in possession of the plaintiff and allowed the appeal and decreed the suit. Against the said finding, the defendants, who are the legal heirs of Kalaperumal have preferred the second appeal.

7. Based on the above said pleadings, the following issues were framed by the trial Court:

(i) Whether the suit property belongs to the plaintiff and whether the plaintiff is in possession of the suit property?

(ii) Whether the plaintiff is entitled for the relief of declaration and injunction?

(iii) Whether the suit property is in possession and enjoyment of the defendant?

(iv) What are all the reliefs the plaintiff is entitled to?



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8. At trial, the plaintiff examined himself as P.W.1. One R.Lakshmanan and M.Vellaipandi are P.Ws.2 and 3. Exs.A1 to A12 were marked. Property tax book issued by Senkottai Municipality in the name of plaintiff is Ex.A1. Property receipt issued in the name of plaintiff is Ex.A2. Kist receipts in respect of the suit property issued in the name of both the plaintiff and the defendant from the year 1989 to till 06.02.1996 are Exs.A3 to A9. The defendant Kalaperumal's son Ramaiah was examined as D.W. 1. Exs.B1 to B8 were marked. Registered sale deed executed by the father of the plaintiff viz., Shanmuga Pandian in favour of the defendant's mother Easwari Aandi Pandian dated 12.12.1950 is Ex.B2. The Kist receipts in the name of defendant 5 in number are Exs.B3 to B7. The order passed by Senkottai Municipality, which was issued to the defendant is Ex.B8.

9. The following substantial questions of law are framed in this appeal.

(a) Whether the first appellate Court erred in law in decreeing the suit merely because Ex.B2 sale deed relied



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upon by the defendant is not acceptable?

(b) Whether the first appellate Court erred in law in rejecting Ex.B2, sale deed merely because father's name of the vendor in Ex.B2, sale deed has been stated as Kalaperumal Pandian instead of Ramar Pandian.

10. After analysing the entire oral and documentary evidence, the trial Court has concluded that when the plaintiff's father has sold the suit property to the mother of the defendant through registered sale deed in the year 1950 itself, with regard to the change of title, the plaintiff cannot lead any evidence and concluded that the plaintiff is not entitled to either for the relief of declaration of title or for consequential permanent injunction and rejected the claim of the plaintiff in toto.

11. Whereas the first appellate Court, after hearing both sides has held that the defendant has not let in any evidence that the suit property and Ex.B2 property are one and the same and the defendant has failed to produce the partition deed and failed to prove the sale deed /



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Ex.B2. The first appellate Court allowed the appeal by setting aside the judgment and decree of the trial Court.

12. Hence, this second appeal by the defendants, who are the legal heirs of Kalaperumal.

13. The learned counsel appearing for the appellants/defendants would strenuously argue that the suit property came to the share of Shanmuga Pandian through family partition. As the defendant had given application to Senkottai Municipality to effect name change in the property tax register, pursuant to Ex.B2, sale deed, a notice was sent to the plaintiff and pursuant to the receipt of the said notice sent by the defendant, the plaintiff filed the suit. He would further contend that only at the instance of the defendant, name of the plaintiff was deleted by the Municipality in the year 1996. His candid contention is that the plaintiff's father Shanmuga Pandian sold the suit property in favour of the defendant's mother Easwari by way of registered sale deed executed on 12.12.1950 (Ex.B2, registered sale deed) and since then Easwari and after the life time of Easwari, the



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first defendant Kalaperumal have been in possession and enjoyment of the suit property. To prove the same, the tax receipts in the name of defendant have also been filed and marked As Exs.B4 to B7. Therefore, he would contend that without any right or title, the plaintiff has filed the vexatious suit and sought for dismissal of the same.

14. Per contra, the learned counsel appearing for the respondent/plaintiff would vehemently contend that admittedly, the suit property fell to the share of his father Shanmuga Pandian and in the capacity of his son, his family is in possession and enjoyment of the suit property. In Ex.B2 / sale deed, the name of Kalaperumal's father is found incorrect. To prove his enjoyment and possession in the suit property, the kist receipts viz., Exs.A2 to A9 have been marked and seeks for dismissal of the appeal.

15. Heard the rival submissions of Mr.V.Shathurthi Raja, learned counsel appearing for the appellant/defendant and Ms.R.J.Roshini, learned counsel appearing for the respondent/plaintiff.



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16. The facts that one Raman Pandian had two sons viz., Shanmuga Pandian and Aandi Pandian, the plaintiff Ramaiah is the son of Shanmuga Pandian, Aandi Pandian's wife is Easwari and the first defendant Kalaperumal is the son of Aandi Pandian are not in dispute. The suit property was originally fell into the share of plaintiff's father Shanmuga Pandian in the oral partition is not in dispute. The plaintiff has laid the suit for declaration of title and for consequential permanent injunction. P.W.1, during his cross - examination has stoutly denied the execution of registered sale deed by his father in favour of Easwari Aandi Pandian, contending that his father's name Shanmuga Pandian is not mentioned correctly. Both sides have filed kist receipts for different period. The prime contention of the defendant is that the suit property was purchased by Easwari Ammal, who is none other than the mother of Kalaperumal on 12.12.1950, from the father of plaintiff and since then they have been in possession and enjoyment of the suit property.



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17. Though the plaintiff states that for a long period his father's whereabouts was not known and it is to be considered that his abscondance is a civil death, no steps appeared to have been taken by the plaintiff in this regard. The defendant, apart from the pleadings in the written statement and examined himself as D.W.1. to prove the averments made in the written statement, he filed the original sale deed, dated 12.12.1950. Ex.B2 reads as follows:

“செங்கோட்டை பகுதி தெற்கு தெருவில் ஆண்டி பாண்டியன் ஸ்திரி பாண்டிய குல ஸ்திரி, வீட்டு வேலை, முப்பத்து அஞ்சு வயதுள்ள ஈசுவரி அம்மாளுக்கு காலபெருமாள் பாண்டியன் மகன், பாண்டிய குலம், விவசாயம், முப்பது வயதுள்ள சண்முகம் பாண்டியன் தனக்காகவும் தன் மகன் எட்டு வயதுள்ள ராமையாவுக்கு வேண்டி கார்டியனாகவும் கூடி எழுதிக் கொடுத்த விலைபத்திரம்...”

18. Of course, as rightly pointed out by the learned counsel for the plaintiff, the vendor's father name is incorrectly mentioned. The plaintiff has filed the suit for declaration of title and for injunction. However, the defendant stoutly contend that his mother Easwari Ammal purchased the suit property by way of Ex.B2 (registered sale deed, dated 12.12.1950) and since then they have been in possession and enjoyment of the suit property and thereby the defendant has rightly substantiated his claim.



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Therefore, Ex.B2, the registered sale deed was executed by the father of the plaintiff Shanmuga Pandian in favour of Easwari Aandi Pandian, mother of Kalaperumal. It is made clear that the suit property does not belong to the plaintiff and he is not in possession and enjoyment of the suit property. Relying upon the registered sale deed viz., Ex.B2, the trial Court has rightly concluded that the plaintiff has certainly failed to prove his case and he was rightly non-suited. Since because the father's name of vendor is incorrectly stated, that cannot be a ground to reject Ex.B2 on the part of the first appellate Court. Therefore, the questions of law are answered against the plaintiff/respondent.

19. In view of the aforesaid discussions, this Second Appeal stands allowed and the judgment and decree of the first appellate Court is set aside. The suit in O.S.No.111 of 1996 is dismissed. Considering the relationship between the parties, there is no order as to costs.

13.10.2023

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

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To

- 1.The Principal Subordinate Judge,
Tenkasi.
- 2.The District Munsif Court,
Senkottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.

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