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S.A.No.639 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2024

PRONOUNCED ON : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.639 of 2007

1.Panchali

2.Palanivel

3.Parvathy

4.Boobalan

...

Appellants

Vs.

1.Ranganayagi

2.Dhayalan

...

Respondents

Prayer:- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree of the Additional Subordinate Court, Tindivanam, dated 29.01.2007, in A.S.No.116 of 2005, reversing the Judgment and Decree of the Additional District Munsif Court, Tindivanam, dated 27.07.2005, in O.S.No.138 of 1998.

For Appellants : Mr.P.Srinivasan

For Respondents : Mr.S.Udayakumar



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JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 29.01.2007, in A.S.No.116 of 2005, on the file of the Additional Subordinate Court, Tindivanam, reversing the Judgment and Decree dated 27.07.2005, in O.S.No.138 of 1998, on the file of the Additional District Munsif Court, Tindivanam.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiffs, in brief, is that the suit property is the ancestral property of the plaintiffs, their forefathers one Sababathi gounder and Subraya gounder were in enjoyment of the same. The properties around the suit property are purchased by the first plaintiff. The first plaintiff has changed the name in the patta for all the properties including the suit property. His properties are now comprised in patta Nos.385 and 491. The suit property is found in patta No.491. Even the first plaintiff was cultivating the poramboke land around the suit property and was paying the penalty. The



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first plaintiff was in possession of the suit property for around three years by digging a Well in it. He also installed an oil engine in the suit property for irrigation some 13 years ago. Paddy is standing on the suit property at the time of filing of the suit. Under such circumstances, the first defendant, claiming title over the suit property through her father Arumugam, threatened to trespass into it. The second defendant, who is the husband of the first defendant, is also trying to cultivate the suit property along with the first defendant. The father of the first defendant has no right over the suit property. The father of the first defendant has gone to Chennai some 50 years ago and also died some 30 years ago. The defendants are threatening to reap the standing crop. Hence, the plaintiffs were constrained to file the suit against the defendants. As the first plaintiff died during the pendency of the suit, the plaintiffs 2 to 5 have been added as parties to the proceedings.

4. The defendants contested the suit, denied the allegations in the plaint and filed a written statement contending that the suit property originally belonged to one Ponnann and he has two sons, namely, Chinnapaiyan @ Ponnusamy and Arumugam. After the death of the said Ponnusamy,



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Arumugam and the sons of Arumugam, the first defendant along with her sisters and brothers are in possession and enjoyment of the same. The first defendant is managing the suit property on behalf of her sisters and brothers. On petition to the Tahsildhar, Tindivanam, a joint patta including her name was issued for the suit property on 19.06.1996. The plaintiffs have no right over the suit property and thus, pleaded to dismiss the suit.

5. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the suit property belongs to the plaintiffs?

2. Whether the first defendant is in possession of the suit property?

3. Whether the plaintiffs are entitled for declaration and permanent injunction?

4. To what other reliefs, the plaintiffs are entitled to?

6. Before the Trial Court, in support of the plaintiffs' case, PWs 1 to 3 were examined and 9 documents were marked as Ex.A.1 to Ex.A.9. On the



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side of the defendants, DWs 1 to 3 were examined and 14 documents was marked as Ex.B.1 to Ex.B14.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for with costs.

8. Aggrieved over the same, the defendants filed A.S.No.116 of 2005, before the Additional Subordinate Court, Tindivanam. The First Appellate Court, after considering the entire materials and evidence on record, allowed the appeal. Aggrieved by the same, the present second appeal has been filed.

9. The second appeal has been admitted on the following substantial questions of law:

1) Whether the lower appellate Court is right in holding that the plaintiffs are not in actual physical possession while the defendants admitted the same by pleading in the written statement and filing Ex.B2?



2) When once possession of plaintiffs are upheld, are the plaintiffs not entitled to the relief of injunction in the absence of the defendants establishing a better title as held in AIR 1972 S.C. 2299 and AIR 2004 S.C.4609?

10.The learned counsel for the appellants submitted that the First Appellate Court is erroneous in reversing the well considered judgment of the Trial Court and misconstrued the joint patta, and confused it with Ex.A1 of the year 1991 issued in favour of Panduranga Gounder (died), who is the first plaintiff. The First Appellate Court failed to consider Exs.B2 & B14. All the abovesaid four documents and the evidence of PW3 Kothandarama Gounder with regard to the possession of the plaintiffs over the suit property were not properly considered. There is no ground for reversing the judgment of the Trial Court and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal.

11.The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and further contended that the plaintiffs filed a suit to declare their title over the plaint schedule property and mainly



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relied upon Ex.A1 patta transfer proceedings issued on 09.05.1991. Apart from this, there are no documents to show the title of the plaintiffs towards the plaint schedule property and there is also no evidence for the possession over the plaint schedule property. Therefore, the First Appellate Court had rightly reversed the judgment of the Trial Court and allowed the appeal. There is no irrelevant consideration, no ground for interference and no substantial questions of law involved in this case. There are no merits in the case and thus pleaded to dismiss the Appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.From the records, it is seen that the case of the plaintiffs is that the plaint schedule property is the ancestral property of the first plaintiff Panduranga Gounder (died), who is the husband of the second plaintiff and father of the plaintiffs 3 to 5. According to the plaintiffs, the property was owned by their forefathers Sababathi gounder and Subraya gounder. To support this pleading, the plaintiffs have failed to produce any documents.



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14.Further, on perusal of the records, it is noticed that the plaintiffs had filed a document Ex.A1, dated 09.05.1991, which is the proceedings of the Deputy Tahsildar, Tindivanam, for changing the patta for survey Nos.92/6, 5 and 92/7, based upon the petition given by the first plaintiff. On perusal of Ex.A1, it is noticed that S.No.92/7 is in the suit property. In the Deputy Tahsildar's proceedings, it is stated that this property is purchased by Pandurangan (died) S/o Chinnathambi Gounder. Based upon this proceedings, patta has been given to Pandurangan for S.No.92/7 and joint patta dated 28.09.2004 is also given along with the names of the defendants Ranganayagi and others, which has been marked as Ex.B5. Apart from this document, there is no other document to show the title of the plaintiffs over the plaint schedule property.

15.A perusal of Ex.A1, dated 09.05.1991, evidences the fact that for the suit property in S.No.92/7, patta has been issued vide proceedings dated 09.05.1991, on the petition given by the first plaintiff as though he purchased the property and enjoying the same. It exposes the fact that the plaint schedule property is not an ancestral property owned by his forefathers Sababathi gounder and Subraya gounder. Apart from this, plaintiffs have not



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filed any sale deed or any evidence to show that they purchased the suit property. In the absence of any document to show that the plaintiffs had purchased the property as well as the properties owned by their ancestors, the plaintiffs have failed to prove their title. The Trial Court had failed to consider the fact, which the First Appellate Court had rightly observed that the plaintiffs failed to prove their title over the suit property. Next, with regard to the physical possession of the plaintiffs, apart from the join patta issued to the plaintiffs along with the defendants in Ex.B5, there is no evidence to show their enjoyment over the plaint schedule property.

16.Further, on perusal of Ex.B2 alleged lease receipt executed by the first plaintiff on 07.07.1996, in the description of the property, survey number is mentioned as S.No.88/3, 57cents. There is no evidence on record to show that S.No.88/3 relates to the disputed S.No.92/7. In the absence of any evidence to correlate S.No.88/3 in Ex.B2 with the suit property in S.No.92/7, there cannot be any evidence to show the possession of the suit property by the plaintiffs. Therefore, the First Appellate Court is right in holding that the plaintiffs are not in actual physical possession and there is no admission in the written statement about the possession of the plaintiffs in the plaint schedule



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property and the plaintiffs' possession is not proved. In such circumstances, the principles of law settled in *AIR 1972 S.C.2299 and AIR 2004 S.C.4609* are not applicable to the case on hand.

17. Therefore, the findings of the First Appellate Court is based upon the evidence and there is no irregularity or perversity in the findings of the First Appellate Court. It has not committed any error in considering the pleading of the parties. No evidence has been misconstrued and there is no substantial questions of law involved in this case. There is no ground for interference and there are no merits in the second appeal.

18. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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19.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No



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- 1.The Additional Subordinate Court, Tindivanam.
- 2.The Additional District Munsif Court, Tindivanam.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.639 of 2007

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