



S.A. No.113 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2024

DELIVERED ON :01.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.113 of 2019
and CMP No.8434 of 2020

1.Arumugham
2.Palanivel
3.Bakiyammal
4.Ranganayaki

.... Appellants

Versus

1.Venkatachalam
2.N.Ranganathan
(R.2 is impleaded vide Court order dated
11.07.2023 made in CMP No.7075/2021
in S.A.No.113 of 2019)

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.117 of 2017 dated 19.07.2018 on the file of Subordinate Judge, Ulundurpet, confirming the judgment and decree dated 10.09.2015 in O.S.No.25 of 2010 on the file of II Additional District Munsif, Ulundurpet.



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For Appellants

: Mr.R.Harikrishnan
For Mr.Govind Chandrasekar

For Respondents

: Dr.A.Thiyagarajan
Senior Counsel for
Mr.M.Nallathambi
For R.1
R.2 – No appearance

JUDGMENT

The unsuccessful defendants, who suffered concurrent findings before the trial Court as well as the first appellate Court, are the appellants in the present Second Appeal.

2. The brief facts of the case are as hereunder:-

The plaintiff sought for declaration and permanent injunction relating to the property, comprised in Re-survey No.224/21-O and situate in Semmanangur Village, Ulundurpet Taluk. The plaintiff based his claim on an assignment made by the Deputy Tahsildar, Ulundurpet in Proceedings No.57/78 dated 13.11.1968. Thereafter, the plaintiff was also given revenue patta No.197 under Patta Passbook Act, 1987. Further, the said ownership of the plaintiff was also reflected in the chitta and other revenue records. According to the plaintiff, he has been in physical possession and enjoyment



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of the property. The defendants compelled the plaintiff to sell his property, which was lying adjacent to the property of the defendants. The defendants owned lands in S.No.224/21-J which also was originally assigned in their favour by Deputy Tahsildar, Ulundurpet. The plaintiff was not agreeable for the demand for the sale of his property and therefore, according to the plaintiff, the defendants attempted to interfere with the possession and also tried to dispossess him. Under such circumstances, the suit is filed.

3. The suit was resisted by the defendants contending that the plaintiff has to establish the plaint averments and allegations with regard to possession of 5 cents in S.No.224/30 and that the defendants' ancestors enjoyed the suit property by also constructing a house and rearing cattle and that the plaintiff has never been in possession as claimed and therefore, not entitled to the suit reliefs.

4. The trial Court found that the plaintiff has been in physical possession of the suit property right from the date of assignment in his favour and also found that the documents, on which reliance was placed by the defendants, did not pertain to the said Survey Number and therefore, granted



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the relief of declaration and injunction as prayed for. The first appellate court also concurred with the findings of the trial Court and also dismissed the appeal filed by the defendants. Aggrieved by the concurrent findings of the Courts below, the defendants have preferred the present Second Appeal.

5. On 01.02.2019, the above Second Appeal was admitted on the following substantial questions of law: -

- (a) Whether the Courts below have committed a jurisdictional error in granting a decree of declaration of title on the basis of revenue documents?
- (b) Upon the failure of the plaintiff to independently establish title through reliable documents, whether the Courts below have committed a manifest error in not dismissing the suit in the light of the judgment of the Supreme Court in Union of India v Vasavi Coop. Housing Society Ltd., (2014) 2 SCC 269?
- (c) Whether the Court below was right in mechanically acting upon Ex-A1, whose dubious entries were not even probed into, overlooking the fact that it can never be construed as a source of title?



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(d) Whether the Courts below have mis-casted the burden of proof on the defendants thereby vitiating their judgments in the light of the judgment of the Supreme Court in Rangammal V Kuppuswami (2011 12 SCC 220)?

6. I have heard Mr.R.Harikrishnan, learned counsel representing for Mr.Govind Chandrasekar for the appellants and Dr.A.Thiyagarajan, learned Senior Counsel for the first respondent. I have also gone through the records available in the form of typed set and also the judgments of the trial Court as well as the first appellate Court.

7. Admittedly, both the plaintiff and the defendants claim title tracing to assignment pattas in their favour. According to the plaintiff, he was assigned patta as early as on 13.11.1968. Exs.A.1 to A.6, exhibited by the plaintiff also confirm that the plaintiff has been in physical possession of the suit property by production of revenue records like chitta and land register.

8. Learned Senior counsel appearing for the respondents would contend that the Court exhibit Ex.X1 is not a document which can be relied as



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evidence as it was issued by the Village Administrative Officer, who was not a competent authority to issue Ex.X-1 “A” Register and Ex.X-A.4 Chitta.

According to the learned counsel for the respondents, it is only Tahsildar, who is the competent authority and even Tahsildar has to conduct enquiry and after inspection and also consulting the Revenue Inspector alone, revenue records can be issued to the persons, who claim mutation of the records in their name. I find force in the said submissions of the learned Senior Counsel. The appellants have relied on Exhibits which are pertaining to S.No.224/21-J which is not even related to the suit property.

9. On perusal of Ex.A.1, I am unable to find that there are dubious entries as alleged by the appellants. I also do not find that the Courts have mis-casted the burden of proof as claimed by the appellants. The courts below have concurrently assessed the oral and documentary evidence adduced by not only the plaintiff, but also by the defendants, including Court exhibits Ex.X.1 and Ex.X.4 and ultimately found that the plaintiff had established his right and title, including possession of the suit property.

10. I do not find any perversity or illegality, warranting interference



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under Section 100 of the Civil Procedure Code.

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11. For the above reasons, all the substantial questions of law are answered against the appellant and the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2024

Index: Yes/No

Speaking Order/Non-Speaking Order

sr

To

1. The Subordinate Court, Ulundurpet
2. The II Additional District Munsif, Ulundurpet.
3. The V.R.Section, High Court, Chennai.



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P.B.BALAJI,J.

SR

Pre-Delivery Judgment
in S.A.No.113 of 2019

01.03.2024