



S.A.No.1290 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

S.A.No.1290 of 2010

Ayyan (Died)

1.Periyasamy

2.Kannan

3.Chinnapaiyan

4.Marudhay

5.Rangasamy

6.Kanagaraj

7.Kala

8.Lakshmi

...

Appellants

Vs.

Kalaimani

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the Principal Subordinate Judge's Court at Kallakurichi dated 28.08.2009 in A.S.No.76 of 2006, partly modifying the judgment and decree of the II Additional District Munsif Court, Kallakuruchi, dated 20.03.2006 in O.S.No.295 of 2003.

For Appellants : M/s.T.R.Gayathri

For Respondents : Mr.P.Valliappan, Senior Counsel
for G.R.M.Palaniappan

JUDGMENT



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Challenge in this second appeal is made to the Judgement and Decree of the Principal Subordinate Judge's Court at Kallakurichi dated 28.08.2009 in A.S.No.76 of 2006, partly modifying the judgment and decree of the II Additional District Munsif Court, Kallakuruchi, dated 20.03.2006 in O.S.No.295 of 2003.

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

3.The defendants in O.S.No.295 of 2003 on the file of the II Additional District Munsif Court, Kallakurichi are the appellants herein.

4.The respondent/plaintiff filed a suit against the defendants/appellants for the following prayer,

“The suit is filed for declaration that the plaintiff is entitled to the suit properties for permanent injunction to restrain the defendants from obstructing the plaintiff's possession in the suit property and for costs.”

5.The trial Court after recording evidence and after framing



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necessary issues, decreed as prayed for. Aggrieved by this, the defendants/appellants filed an Appeal in A.S.No.76 of 2006 on the file of the Subordinate Judge, Kallakurichi.

6.The learned Appellate Judge, after considering the case, modified the judgment and decree of the trial Court and set aside the decree with regard to the declaratory relief. Aggrieved by this, defendants filed the present Second Appeal.

7.The learned counsel for the appellants/defendants submitted that, the First Appellate Court failed to consider the document filed by the defendants in Ex.B.1 and B.2 and also that he is in possession and enjoyment of the property for more than 30 years. Admittedly, the suit property is a Government Poromboke land. The defendants being the sharers of the adjacent land, also enjoyed the suit properties for a long period. The plaintiff by purchasing the property in the year 2002 by way of Sale Deed dated 24.02.2003, Ex.A.2. After getting patta, filed suit for declaratory injunction. Without any evidence for possession over the



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plaint schedule property, the First Appellate Court granted injunction.

There are substantial questions of law involved in this case. The trial Court and the First Appellate Court erroneously found that the appellants are not entitled for the relief claimed, without considering the evidence on record and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal.

8.The learned counsel for the respondent supported the judgment and decree of the First Appellate Court. The possession of the plaintiff is considered by the First Appellate Court and based upon the evidence found that the plaintiff as well as the vendor are in possession for a long period, granted enjoyment alone and set aside with regard to the declaratory relief over the properties. There is no substantial question of law involved in this case. The finding of the First Appellate Court is based on the evidence. Therefore, there is no merit in this appeal and prays for dismissal.

9.I have considered the matter in the light of the submissions



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made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

10. On perusing the fact and evidence, it is seen that the plaintiff filed a suit for declaration of title and permanent injunction with regard to the plaint schedule property based upon his Sale Deed dated 24.02.2003. It is evidenced by Ex.A.2. In pursuance of Ex.A.2, he transferred the patta in his name, which is evidenced in Ex.A.3. He also produced kist receipts for the plaint schedule property, which is evidenced in Ex.A.4 and the proceedings of the planning officer for changing the patta in the name of the plaintiff is evidenced by Ex.A.5. On the defendant's side, they have filed Ex.B.1, photographs of the plaint schedule properties and Ex.B.2 ie., Sale Deed dated 19.10.1971. Admittedly, it does not pertain to the suit property. Further, the First Appellate Court considered the entire evidence and found that the plaintiff failed his title over the suit schedule property and no evidence has been produced to prove his title over the properties. In the absence of any clear evidence of title, the First Appellate Court had set aside the



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judgment and decree with regard to declaration of title over the plaint schedule property and considered the possession over the plaint schedule property and taken note of the oral evidence of plaintiff as well as purchased by plaintiff under revenue records found the enjoyment of the plaintiff vendor as well as plaintiff and discussed this in his judgment in para 16 and 20 as follows,

“16.However, while considering, who holds the better possessory title over the suit property, the Court has to definitely consider the possessory documents in whose it stands. Plaintiff has filed patta Ex. A3, A5 and Kist Ex.A4, to prove possession over the suit property. But, the defendant has not filed a single document to prove possession over the suit property, when defendant has pleaded that since 30 years, they encroached the suit property and has stated be in enjoyment and possession over the suit property, why no chitta, adangal, kist receipts or C-Vajinama has been filed is a brow raising question.

20.Hence, between the plaintiff and defendants, the Court has to evaluate, who holds a better possessory title over suit property. Herein, in this case, plaintiff has produced Ex.A3 patta and Ex.A5



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patta proceedings and Ex.A4 kist receipt to prove possession on the date of filing the suit. Hence, plaintiff holds a better possessory title than that of the defendants. Hence, plaintiff would be entitled to enjoy the suit property without interruption by the defendants, since possession proved by the plaintiff.”

11.It reflects that the findings of possession over the plaint schedule property by plaintiff is based on the evidence. There is no misappreciation of evidence, irrelevant consideration and no ground to hold that the findings are perverse. There are no merits in the appeal. Further, the learned counsel for the appellants does not meet out the parameter laid down by the Hon'ble Supreme Court in the following decisions:-

1.**AIR 2008 1749 379** in the case of ***Moses Vs. Kasturiba***

2.**AIR 2008 SC 956** in the case of ***Abdul Raheem Vs.***

Karnataka Electricity Board

3.**AIR 2008 SC 1749** in the case of ***Kashmir Singh Vs.***

Harnam Singh and another.

12.Therefore, the findings of the First Appellate Court is based



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upon the evidence on record and they are not perverse. There is no ground for reversing the findings recorded by the First Appellate Court. There is no merit for admitting in the Second Appeal. There is no substantial questions of law involved in this case.

13.Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition, if any, is closed.

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Principal Subordinate Judge's Court, Kallakurichi

2.The II Additional District Munsif Court, Kallakuruchi

V.SIVAGNANAM, J.



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