



S.A.Nos.111 & 112 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 24.01.2024

Pronounced on: 16.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.Nos.111 & 112 of 2018

S.A.No.111 of 2018

Rajabathar (Died)

Balaraman (Died)

1. K.Thulukannam.

2. K.Venkatesan.

... Appellants/3rd and 4th appellants/Plaintiffs

/versus/

E.Narayanasamy, (Died)

1. Sundararaj,

2. K.Indira,

3. Prema

.... Respondents

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Court of the Subordinate Court, Tambaram in A.S.No.66 of 2011 dated 24.04.2017 in confirming the judgment and decree in O.S.No.3257 of 1997 dated 10.06.2011, on the file of the Principal District Munsif Court, Alandur, Chennai.

For Appellants : Mr.K.Abhirame,
for Mrs.V.Srimathi.

For Respondent : No appearance



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Balaraman (Deceased)
Rajabadhar (Deceased)

1. Durai @ Thulukanam
2. Ambika
3. Venkatesan

... Appellants/3rd to 5th Appellants/
4th, 5th & 6th Defendants.

/versus/

A.D.Sundararajan.

.. Respondent/Plaintiff.

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Court of the Subordinate Court, Tambaram in A.S.No.67 of 2011 dated 24.04.2017 in confirming the judgment and decree in O.S.No.636 of 1997 dated 10.06.2011, on the file of the Principal District Munsif Court, Alandur, Chennai.

For Appellants : Mr.K.Abhirame,
for Mrs.V.Srimathi.

For Respondent : No appearance

COMMON JUDGMENT

The unsuccessful plaintiffs in O.S.No.3257 of 1997 and unsuccessful defendants in O.S.No.636 of 1997 are the appellants before this Court.



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2. The parties are described as per their litigating status before the

trial Court.

(i). The suit in O.S.No.636 of 1997 was filed for relief of permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit property, by the plaintiff. The subject matter of the said suit is 14 ½ cents of land with superstructure thereon, comprised in S.No.674/1.

(ii). The suit in O.S.No.3257 of 1997 was filed for the relief of recovery of vacant possession from the defendants 2 & 3, after removing the superstructure standing on the suit property. The subject matter in this suit is a site measuring 30 feet North - South on the Eastern side and 29 feet North - South on the western side and 216 feet East - West on the southern side and 217 feet East - West on the Northern side.

3. The case of the plaintiff in O.S.No.636 of 1997 was that the plaintiff was the absolute owner of the suit property having purchased the same under the sale deeds dated 11.12.1986 and dated 25.11.1988. According to the



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plaintiff, the plaintiff had also put up a superstructure over the said suit land and had been in absolute possession and enjoyment of the same.

4. The grievance of the plaintiff was that the 1st defendant being the southern side neighbour was giving trouble to the plaintiff as well as his tenants and on 18.09.1991 and 19.09.1991, the defendants have made attempts to encroach the suit property by removing the southern side fence which was successfully prevented by the plaintiff and on the said cause of action, the plaintiff sought for relief of permanent injunction.

5. The said suit was resisted by the defendants by filing written statements stating that the allegations of absolute ownership and possession of the plaintiff were actually untrue and that the 3rd defendant had already filed a suit against the plaintiff in O.S.No.45 of 1989 (This was subsequently transferred and renumbered as O.S.No.3257 of 1997). According to the defendants, the vendor of the plaintiff, Mr.E.Narayanasamy was not the absolute owner of the suit property and he was also not in exclusive possession and enjoyment of the suit property at any point of time. According to the defendants, the sale deed dated 25.11.1988 appears to be a forged document



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and further, the defendants were only co-owners along with the vendor E.Narayanasamy and therefore, the suit for permanent injunction as against the co-owners could not lie and therefore, the defendants prayed for dismissal of the suit.

6. In the renumbered O.S.No.3257 of 1997 (originally O.S.No.4589 before the Poonamallee Court), the plaintiffs, alleging that the property was originally owned by one Nagamani Naicker and one Thambiran Naicker, in and by sale deed dated 05.01.1938, purchased the suit property from Nagapa Naicker, grand son of Nagamani Naicker, through his son, Ponnappa Naicker. It is also alleged that in turn the said Thambiran Naicker conveyed the suit property to Mangammal, wife of Thambu Chettiar in and by sale deed dated 29.04.1940. It is alleged in the said suit that the said Mangammal left the village, handing over the sale deed to the father of plaintiffs 1 & 2. Ever since, the plaintiffs and the 1st defendant namely E.Narayanasamy were enjoying the suit property jointly. The plaintiffs have specifically stated that E.Narayanasamy was not the absolute owner of the suit property and the conveyance effected by the 1st defendant as if he was the absolute owner, to the 2nd defendant was not sustainable and thereafter, there was exchange of notices



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between the plaintiffs and the defendants and in order to recover the possession of the suit property from the defendants 2 & 3, who are third party purchasers, the suit has been filed.

7. Pending suit, the 3rd plaintiff died and plaintiffs 4 & 5 were impleaded as the legal representatives of the deceased 3rd plaintiff.

8. The 4th defendant is the power agent of the plaintiff in O.S.No.636 of 1997. The defendants 4 & 5 in the said suit filed a common written statement contending that the plaintiff had no nexus to the suit property and the defendants are bonafide purchasers for value, after making enquires and had also inspected the suit property. It is also stated that it is only the defendants who were in absolute possession and enjoyment of the suit property and the said possession is lawful and under registered sale deeds dated 11.12.1986 and 25.11.1988. Therefore, the plaintiff were not entitled to the relief of possession.

9. Both the suits were tried together by the Principal District Munsif, Alandur. Before the trial Court, the power agent of the plaintiff in



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O.S.No.636 of 2017 namely, Indira examined herself as P.W.1 and Ex.A.1 to Ex.A.7 were marked. On the side of the defendants, 4th defendant in O.S.No.636 of 1997 and 4th plaintiff in O.S.No.3257 of 1997 examined himself as D.W.1 and Ex.B.1 to Ex.B.5 were marked. The Advocate Commissioner's report and rough sketch were marked as Court documents in Ex.C.1 and Ex.C.2.

10. After assessing the oral and documentary evidence, the trial Court decreed the suit for permanent injunction in O.S.No.636 of 1997 and dismissed the suit in O.S.No.3257 of 1997 for recovery of possession.

11. Aggrieved by the decision in the above two suits, A.S.Nos.66 and 67 of 2011 came to be filed before the Subordinate Court, Tambaram.

12. Pending suit, an application was also taken out in I.A.No.153 of 2013 under Order 26 Rule 10 (A) of C.P.C., to send Ex.A.2 to the Forensic Department for comparison and get the opinion in respect of signature as well as thumb impression found in Ex.A.1.



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13. The First Appellate Court decided the appeal along with the said Interlocutory Application. The First Appellate Court, on comparing the signature of Mr.E.Narayanasamy (available in the vakalat) and Ex.A.2, came to the conclusion that signatures are one and the same and there was no necessity to send Ex.A.2 to the Forensic Department. Consequently, the Interlocutory Application No.153 of 2013 was dismissed.

14. Further, in so far as the appeals were concerned, the First Appellate Court finding that Ex.A.2 sale deed executed by E.Narayanasamy was valid and the plaintiff was in possession and enjoyment of the suit property right from the year 1986, on available evidence, dismissed both the appeals, finding that the trial Court had arrived at right decision.

15. Aggrieved by the said concurrent findings, the plaintiffs in O.S.No.3257 of 1997 and the defendants in O.S.No.636 of 1997 are before this Court.

16. At the time of admitting the above Second Appeals, this Court framed the following substantial questions of law:-



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“(i). Whether the Lower Appellate Court was right in comparing the signature found in Exs.A1 & A2 with the vakalat filed in the proceedings which came into existence after the dispute arose.

(ii). Whether the Lower Appellate Court was right in holding that the signatures are one and the same without giving any reason for its conclusion.

(iii). Whether the documents under Ex.P4 & Ex.P5 would not prove the interior title and possession of the family of the appellant and whether a sharer could deal with a entire property to the detriment of the other Co-owners.”

17. Heard Ms.K.Abhirame, for Mrs.V.Srimathi, Learned Counsel for the appellants. Despite service of notice, the respondents have not chosen to appear. I have also perused the pleadings in the respective suits as well as the oral and documentary evidence and the judgments of the Courts below.

18. The Learned Counsel for the appellants would revolve her submissions around the substantial questions of law that have been framed by this Court at the time of admitting the Second Appeal.



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19. The Learned Counsel for the appellants would contend that the

First Appellate Court ought to have allowed the Interlocutory Application seeking opinion of the Forensic Department, instead of choosing to compare the disputed signature by itself. Further, she would also add that even though the Court was vested with the power to compare the signatures, the First Appellate Court had clearly erred in comparing the disputed signature with the signature in the Vakalat in the present proceedings itself. Insofar the said submission, I am in entire agreement with the argument advanced by the Learned Counsel for the appellants. Admittedly, Ex.A.2 is the disputed document and as per the pleadings and evidence, it is seen that the documents itself came into existence after a notice was issued by the appellants. The vakalatnama which was signed by E.Narayanasamy was a document that came into existence after the disputes arose between the parties. Thus, the Court ought not to have compared the signature in the said vakalatnama with the disputed document. Ex.A.1 is an admitted document and therefore, as requested by the appellants, by way of Interlocutory Application No.153 of 2013, the disputed signature and thumb impression in Ex.A.2 should have been compared with Ex.A.1, in order to arrive at as the truth and genuineness of Ex.A.2.



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20. The next contention of the Learned Counsel for the appellants

is that the Government ought to have added as a party, since the lands were admittedly Gramanatham lands. However, I am unable to accept the said submission of the Learned Counsel for the appellants for the reason that even though the lands are Gramanatham lands, the dispute is only *inter se* disputes between private parties, who claim title and possession over the suit lands. In such circumstances, I do not consider it fit that the suit has to fail for non-joinder of necessary parties, namely the Government Authorities.

21. Further, the Learned Counsel for the appellants would contend that the Courts below have erroneously construed the evidence of the appellants as if it amounts to clear admission in favour of the adversary party and thereby, confirmed his possession and enjoyment of the suit property.

22. I have gone through the evidence of D.W.1 in this connection and I find that the Courts below have proceeded to rely on truncated portions of evidence adduced by D.W.1. It is trite law that the evidence of a witness in a suit has to be read as a whole and not in piecemeal or in isolation. It is the categorical case of the appellants that E.Narayanasamy had no right to alienate



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the suit property as he was only a co-owner and the Courts below erred in relying on truncated portions of evidence of D.W.1 to come to a conclusion that there was a clear admission by D.W.1 in favour of the plaintiff.

23. The Learned Counsel for the appellants would place reliance on the decision of the Hon'ble Supreme Court in *Sopanrao and another -vs- Syed Mehmood and others* reported in (2019) 7 SCC 76, for the proposition that a lesser relief or small version of the relief claimed can always be granted.

24. Further, the Learned Counsel for the appellants would also place reliance on the decision of the Hon'ble Supreme Court in *M.Manoharan Chetty and others -vs- M/s.C.Coomaraswamy Naidu & Sons Madras* reported in (1979) 92 LW 736, with regard to the alleged admission of D.W.1. This Court, in the said decision, has held that the Court had a duty to examine every admission and see whether the given admission would suggest any clear inference on the fact and issue against the party making it. In order to draw adverse inference against the party on the basis of an admission, the Court must primarily find that the admission was comprehensive, unequivocal and wholehog, on the point at issue and if the so called admission falls short of the totality



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of the requisite evidence needed for legal proof of a fact in issue, then the same cannot be taken as an admission against the party making it.

25. In so far as the disputed document Ex.A.2 and the admitted sale deed Ex.A.1, on *prima facie* comparison of the said two documents, it appears that there is apparent discrepancy in the signature of E.Narayanasamy in Ex.A.1 sale deed dated 11.12.1986. The said E.Narayanasamy has signed in Tamil vernacular language with the initial also written in Tamil. However, in Ex.A.2 disputed sale deed, the signature besides differing from signature in Ex.A.1, also contains the initial “E” in English and not in Tamil.

26. Judicial prudence certainly required the First Appellate Court to have sought for an expert opinion with regard to the disputed signatures and considering the fact that the thumb impression was available in both the Exhibits.A.1 and Ex.A.2 sale deeds, the forensic department's report would have placed the Court in a much better position to decide the issue with regard to the disputed document, Ex.A.2.



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27. Moreover, considering the fact that the respondents are also not contesting the matter before this Court, I am of the view that the error committed by the First Appellate Court in comparing the disputed signature with the Vakalatnama can be set right by seeing a report of the forensic Department with regard to not only the disputed signature but also the thumb impression available in both Ex.A.1 and Ex.A.2.

28. This Court is inclined to allow these Second Appeals with the following directions:-

(i). The matter is remitted back to the First Appellate Court. The First Appellate Court shall send the disputed document, Ex.A.2 in original along with the admitted document Ex.A.1, in original to the Forensic Department by appointing an Advocate Commissioner, who shall handover the Ex.A.1 and Ex.A.2 in original in a sealed cover to the Forensic Department and shall obtain a report from the Forensic Department within a period of six weeks from the date of submission of the document to the Forensic Department. The First Appellate Court shall fix the remuneration of the Advocate Commissioner.



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(ii). The Forensic Department shall give its report in a sealed cover and the Advocate Commissioner shall receive it and handover the same to the First Appellate Court, without any delay whatsoever, on obtaining the same from the Forensic Department.

(iii). The First Appellate Court shall thereafter hear the parties before it and if required and found necessary, permit the parties to lead additional oral and documentary evidence and shall decide the appeals within a period of four months from the date of receipt of the Forensic Department's report.

29. With the above directions, these *Second Appeal are partly-allowed*. There shall be no order as to costs.

16.02.2024

Index :Yes/No.

Internet :Yes/No.

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P.B.BALAJI, J.

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Pre-delivery common judgment made in
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