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S.A.No.686 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

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THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.686 of 2010
and
M.P.Nos.1 & 2 of 2010

1. Chinnadurai (Died)
2. Manjula
3. Latha
4. Palanisamy
5. Tamilselvi
6. Velvizhi
7. Gopinath (Minor)
8. Kamalesh (Minor)

(Appellants 7 & 8 were represented by their
mother Velvizhi)

... Appellants

(Appellants 2 to 8 were brought on record as LR's of
deceased sole appellant vide order dated 27.11.2023 in
C.M.P.Nos.9152, 9154 & 9155 of 2023 in S.A.No.686 of 2010)

Vs.

Dhiravidaselvi

...Respondent

Prayer : Second Appeal filed under Section 100 of the Civil Procedure
Code against the judgment and decree dated 24.04.2009 passed in
A.S.No.128 of 2007 by the learned Additional Sub Judge, Vridhachalam,



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partly allowing the appeal against the judgment and decree dated 30.08.2007 passed in O.S.No.473 of 1990 by the learned Principal District Munsif, Vridhachalam.

For Appellants : Mr.K.Shakespeare

For Respondent : Mr.L.Palanimuthu

JUDGMENT

The first appellant herein is the first defendant before the trial Court. The respondent herein is the plaintiff before the trial Court. After the demise of the first appellant, his legal heirs were impleaded as appellants 2 to 8 vide order dated 27.11.2023 in C.M.P.Nos.9152, 9154 & 9155 of 2023 .

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the trial Court.

3. The brief facts which are necessary for the disposal of this Second appeal is as follows:

According to the plaintiff, the suit property originally belonged to one Krishnasamy and one Paramanandham. From them, the plaintiff had purchased under two different sale deeds both dated 05.05.1980. It is further submitted by the plaintiff that he has been raising various crops in



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the suit property and also has been paying kist and other statutory dues. It is the submission of the plaintiff that, since the first defendant's request to purchase the suit property was refused, the defendants got annoyed and started interfering with the possession of the plaintiff. Therefore, the plaintiff has come forward with the suit for declaration and permanent injunction.

4. The said suit was resisted by the first defendant by contending that, the suit property originally belonged to his father Ramasamy, and after his demise, there was an oral partition in the year 1964. In the above oral partition, items 1 and 2 of the amended plaint were allotted to the first defendant, and the 5th item of the amended plaint was allotted to one Vengudusamy. In turn, he sold the said property to the first defendant on 17.05.1968 and 01.03.1975. Therefore, according to the defendant, the plaintiff has no right title over the suit property and hence, prayed for dismissal of the suit.

5. The second respondent has also filed a written statement, but, subsequently, he remained ex parte.



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6. Before the Trial Court, the plaintiff has examined four witnesses as PW1 to PW4, and marked 12 documents as Exs.A1 to A12. On behalf of the first defendant, the first defendant has examined two witnesses as DW1 and DW2 and marked 16 documents as Exs.B1 to B16.

7. The Trial Court, after having considered the oral and documentary evidence, has found that the plaintiff has established her title over the Suit property and decreed the suit. However, when the first defendant approached the first Appellate Court vide A.S.No.128 of 2007, the first Appellate Court found that by virtue of Ex.B2 and Ex.B6, the first defendant has established his right over the 5th item of the amended plaint. Therefore, has partially modified the Judgment and dismissed the suit as against the 5th item of the suit property and confirmed the Decree in respect of other items of the suit property.

8. Not satisfied with the judgment of the First Appellate Court, the first defendant has approached this Court by way of filing this Second Appeal.

9. The learned counsel for the appellants would vehemently contend that, the Courts below have not at all relied on Ex.B2 and Ex.B3,



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which are the revenue records in favour of the first defendant, which would amply establish that the first defendant has been in possession and enjoyment of the suit property. It is also the case of the learned counsel for the appellants that, their names have been entered in the revenue records based upon the oral partition, that had taken place during 1964. Learned counsel for the appellants would further strenuously submit that, though the respondent relied upon Exs.A2 and A3, such document does not disclose the tracing of title. Therefore, contended that by virtue of a mere sale deed, both Courts ought not to have declared the title in favour of the plaintiff.

10. The learned counsel for the appellants also invited the attention of this Court in respect of evidence of PW3, who was the executor of the sale deed/Ex.A2, who was not in position to say, as to how he became the owner of the suit property. Therefore, the learned counsel would submit that the findings recorded by both the Courts below are perverse and liable to be interfered with.

11. Per contra, the learned counsel for the respondent would submit that, even according to the first defendant, there was an oral partition, and



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it is the contention of the first defendant that the suit item 1 and 2 was allotted to him in the year 1964. However, there is no proof submitted by the first defendant. It is also the contention of the learned counsel for the respondent that, PW3 has categorically stated that for the sale of Exs.A2 and A3, the first defendant was instrumental and made all arrangements, and it is also the contention of the plaintiff that after knowing the contents of Exs.A2 and A3, the first defendant has attested the document. Therefore, the first defendant, after the lapse of a long year, cannot turn around and deny the ownership over Krishnasamy and Paramanandham, who are the brothers of the first defendant. Therefore, it is the submission of the plaintiff that findings recorded by both the Courts below are based on records, and that the same cannot be interfered under Section 100 of the Civil Procedure Code, as there is no perversity in the same.

12. This Court has given its anxious consideration to the submissions made by both sides.

13. No doubt, both the plaintiff and the first defendant have set up title over the suit property independently with them. According to the plaintiff, they set up a title, by virtue of sale deeds Exs.A2 and A3. The



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Ex.A2 was executed by Paramanandham, and Ex.A3 was executed by Krishnasamy, in favour of the plaintiff. It is an admitted fact that Krishnasamy and Paramanandham are brothers to the first defendant. But, it is the case of the first defendant that the properties originally belonged to his father Ramasamy, and that there was an oral partition in the year 1964, and that the items 1 and 2 were dealt with by the Krishnasamy and Paramanandham in 1980. More pertinently, the first defendant was the attester to the said document.

14. At this juncture, the learned counsel for the appellants/1st defendant relied on the judgment of this Court reported in **2000 (II) CTC 219** in the case of ***Kannappan Vs. Pargunan and 9 others*** and would contend that mere attestation of the document will not impute the knowledge about the contents of the document.

15. But, the learned counsel for the respondent/plaintiff submits that, notwithstanding the attestation made in Exs.A2 and A3, the execution of Ex.A3 was finalized on the mediated by the first defendant and such participation has not at all been refuted by him during the cross examination.



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16. Therefore this Court is of the firm view that, the attestation made by the first defendant, which is coupled with the evidence of PW3, who had spoken about the un-rebutted involvement of the first defendant in getting Ex.A3 sale deed would definitely be held in favour of the plaintiff, that the first defendant had the knowledge about the execution of Ex.A2 and about the vesting of ownership of the suit property with Krishnasamy and Paramanandham. Therefore, when Krishnasamy and Paramanandham dealt with the property in 1980 which has been attested by the first defendant himself, cannot turn around and say that, he is the owner of the said property.

17. Even for the sake of argument, if we admit the contention of the first defendant that he is the owner of the property by virtue of the oral partition, the revenue records which had been submitted by the first defendant has not substantiated his case.

18. Therefore, this Court is of the firm view that the findings recorded by both the Courts below, that the suit property belongs to the plaintiff, is based on materials and relevant documents. Hence, this Court



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does not find any perversity over the same. Apart from that, from the submissions made by the learned counsel for the appellants this Court could not find the involvement of any substantial question of law.

19. In the result, this Second Appeal is dismissed by confirming the judgment of both the Courts below. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Additional Sub Judge, Vridhachalam,
2. The Principal District Munsif, Vridhachalam.
3. The Section Officer,
V.R.Section, High Court, Madras.

C.KUMARAPPAN, J.

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