



S.A.No.120 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.120 of 2018

Kubendra Kumar
S/o. Kannan
Aged 65 years
Se. Kunnathur Village, Villupuram TalukAppellant

VS

Ayyanar
S/o. Janakirama Gounder
Aged 55 years
Se. Kunnathur Village,
Villupuram Taluk Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 10.08.2017 passed in A.S. No.32 of 2013, on the file of the Principal Subordinate Court,Villupuram, upholding the decree and judgment dated 18.06.2013 passed in O.S.No.184 of 2011, on the file of the Principal District Munsif Court, Villupuram.



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For Appellant : Mr. R. Srinatha
for Ms. S. Uma
For Respondent : No appearance

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal. The plaintiff filed the suit in O.S.No.184/2011 before the Principal District Munsif, Villupuram for declaration of his title to the suit property and for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. The suit property is described in the plaint as a vacant land in survey number 13/2 of Kunnathur Village, Villupuram Taluk, Villupuram District, admeasuring 456 ½ sq.ft within the boundaries stated therein.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit property originally belonged to Janakirama Gounder. The plaintiff's father Kannan Chettiar purchased the suit property from Janakirama Gounder, father of the defendant under a registered sale deed dated 26.12.1981 (Ex.A1). Ever since the date of purchase, the plaintiff's father was in possession and enjoyment of the suit property. After the death of the plaintiff's father, the plaintiff and his two brothers, namely, Mallikarjunan and Anand partitioned the suit property and each of them were allotted 1/3 share. Subsequently, the brothers of the plaintiff executed a registered sale deed dated 15.12.1986 (Ex.A2) in favour of the plaintiff in respect of the suit property. Hence, the plaintiff has been in possession and enjoyment of the suit property by raising neem trees.

3.2. While so, the defendant attempted to trespass into the suit property without any right. He, therefore, issued a legal notice dated 25.01.2011 (Ex.A3) to the defendant. Since the said notice did not evoke



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any response from the defendant, the plaintiff has filed the suit for declaration of his title to the suit property and for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property.

4. The suit was resisted by the defendant on the following grounds:

- i. The sale deed dated 26.12.1981 (Ex.A1) is a rank forgery.
- ii. The plaintiff's father had never been in possession of the suit property.
- iii. The defendant's father had put up a construction in the suit property even in the year 1980.
- iv. In any event the present plaintiff is aware of the execution proceedings in E.P.No.265/1991 in O.S. No.1261/1988 filed by one Ramu chettiar against the defendant and his father. Hence the suit is barred by limitation.



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5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *" Whether the plaintiff is having title to the suit property by way of sale deed dated 15.12.1986?*
- ii. *Whether the sale deed dated 26.12.1981 is a rank forgery?*
- iii. *Whether the plaintiff is in possession and enjoyment of the suit property?*
- iv. *Whether the plaintiff is entitled for a decree of declaration?*
- v. *Whether the plaintiff is entitled for the decree of permanent injunction?*
- vi. *To what reliefs the plaintiff is entitled?"*

6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A4. The defendant examined himself and marked Ex.B1 and Ex.B8.

7. The learned trial court judge, after analysing the oral and



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documentary evidence adduced on both sides, dismissed the suit filed by the plaintiff vide her decree and judgment dated 18.06.2013 on the following grounds:

- i. The plaintiff has not established that the defendant's father executed Ex.A1 sale deed in favour of his father.
- ii. The evidence of one of the attestors (P.W.2) to Ex.A1 is not helpful to the case of the plaintiff.
- iii. The plaintiff also admitted that he was aware of the litigation between one Ramu Chettiar and the father of the defendant in O.S.No.1261/1988 on the file of the District Munsif Court, Villupuram.
- iv. In E.P.No.265/1991 in O.S. No.1261/1988, the present suit property is shown as item number 6. When the plaintiff states he is aware of the earlier suit in O.S. No.1261/1988, he has not explained as to how his father purchased the property from Janakirama Gounder.
- v. The plaintiff has not also established his possession over the suit property by adducing acceptable evidence.



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8. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.32 of 2013, before the Principal Subordinate Judge, Villupuram. The learned Principal Subordinate Judge, after analysing the oral and documentary evidence on record, upheld the findings recorded by the trial court vide his decree and judgment dated 10.08.2017, as against which the present second appeal is filed.

9. The second appeal was admitted by my learned predecessor on the following substantial questions of law:

"(a) Is the Courts below in dismissing the suit by holding that Ex.A1 is a fabricated document, in the absence of any such pleadings and evidence of the defendant?

(b) Is the courts below right in dismissing the suit despite the plaintiff has proved title to the suit property by filing Ex.A1 and Ex.A2 sale deeds by making necessary pleadings and deposing in evidence?



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10. Heard Mr.R. Srinath, learned counsel for the appellant.

There is no representation on behalf of the respondent.

11. The plaintiff has filed the suit for declaration of his title to the suit property based on the sale deed dated 26.12.1981 (Ex.A1) allegedly executed by Janakirama Gounder, the father of the defendant. According to the plaintiff, on the date of sale agreement, his father paid the entire sale consideration. On the contrary, the defendant's contention is that the suit property was never sold in favour of the plaintiff's father under Ex.A1 and that Ex.A1 is a rank forgery. In order to prove that Ex.A1 is true and valid, the plaintiff relies on his evidence as well as the evidence of one of the attestors (P.W.2) of Ex.A1. P.W.2 in his evidence had stated that he was not aware of the contents of Ex.A1 and that he signed only as a witness. Therefore, the evidence of P.W.2 is not helpful to the case of the plaintiff.

11.1. According to the plaintiff, subsequent to the execution of



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Ex.A1 sale deed, his brothers executed a sale deed Ex.A2 in his favour in respect of their shares in the suit property. However, the boundaries shown in Ex.A1 are totally different from the one found in Ex.A2. It is also relevant to point out that one Ramu Chettiar filed a suit in O.S.No.1261/1988 before the District Munsif, Villupuram against Janakirama Gounder and others and obtained a decree in his favour. He also filed an Execution Petition in E.P. No.25/1991 before the same court and in the execution proceedings, the present suit property was shown as item number 6. The plaintiff in his evidence had admitted that he knew the earlier proceedings in O.S.No.1261/1988 between Ramu Chettiar and the defendant's father. The plaintiff also admitted that he did not raise any objection to the execution proceedings especially when the suit property is shown as one of the items. Moreover, P.W.2 admitted that the defendant is in possession and enjoyment of the suit property by putting up a construction. In the circumstances, the plaintiff has not proved his possession over the suit property. Absolutely there is no documentary evidence to substantiate that the plaintiff's father was in possession and enjoyment of the suit property ever since the date of



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purchase under Ex.A1 sale deed. Both the courts below had, in fact, analysed the evidence on record threadbare and had come to a conclusion that the plaintiff has not proved his case. Thus, the substantial questions of law are answered accordingly.

12. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 10.08.2017 passed in A.S. No.32 of 2013, on the file of the Principal Subordinate Court,Villupuram, and the decree and judgment dated 18.06.2013 passed in O.S.No.184 of 2011, on the file of the Principal District Munsif Court, Villupuram, are upheld.

21.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Principal Subordinate Judge,Villupuram.

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2. The Principal District Munsif, Villupuram.
3. The Section Officer, VR Section, High Court, Madras.