



S.A. No.124 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.124 of 2020

and

CMP. No.2639 of 2020

Tmt.Deivamani

...Appellant

Vs.

1.Ramasamy (Died)

2.Radhakrishnan

3.Thiyagarajan

4.Pandiyan

5.The District Collector,
Collectorate, Ariyalur.

6.The Tahsildar,
Taluk Office, Ariyalur.

7.Thirumathy Ramasamy

8.Kumaravel

9.S.R.Uma

(R7 to R9 are brought on record as

LRs of deceased R1 vide order dated 08.01.2024)

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S. No.6 of 2019 dated 16.12.2019 on the file of the Principal Subordinate Court, Ariyalur District reversing the judgment and decree in O.S. No.281 of 2012 dated 20.12.2018 on the file of the Principal District Munsif, Ariyalur District.

For Appellant : Mr.S.Kamadevan



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For Respondents : Mr.S.Mukunth,
Senior Counsel for
M/s.Sarvabhauman Associates for
R2 to R4 and R7 to R9.
Mr.V.Ramesh,
Government Advocate for R5 & R6
R1 - Died

JUDGMENT

The plaintiff who succeeded in her suit for declaration and permanent injunction before the Trial Court and who suffered reversal findings at the hands of the First Appellate Court, is the appellant.

2. The parties are described as per their litigative status before the Trial Court.

3. The brief facts are as hereunder:

3.1. According to the plaintiff, the lands measuring 1 acre and 92 cents were originally belonging to three brothers, namely Kandasamy, Ramasamy and Dharmalingam. According to the plaintiff, the said lands were divided into three equal portions of 64 cents each, in an oral partition and that the divided properties were in separate possession and enjoyment of



the three brothers. The plaintiff also claims that the extent of 1 acre and 28 cents allotted to Kandasamy and Dharmalingam was sold in favour of Chinnammal Achi and the remaining 64 cents belonged to Ramasamy, the other brother. The plaintiff is the daughter in-law of the said Ramasamy and according to the plaintiff, the suit property belonged to her absolutely and the defendants had no right or claim over the same.

3.2. The said suit was resisted by the defendants 1, 2 and 4. According to the defendants, the father of the defendants, namely Kathirvel Pillai purchased the suit property from Ramasamy, father in-law of the plaintiff, for a sum of Rs. 50. Kathirvel Pillai was in absolute possession and enjoyment for over the statutory period and after his lifetime, his wife Dhanakodi Achi was enjoying the property, by mutuating revenue records in her name and also paying kists. After the demise of Dhanakodi Achi, her four sons entered into a registered partition deed dated 14.12.2011 and they have been in separate possession of their respective shares, effecting subdivision of the survey numbers as well. The suit was therefore sought to be dismissed.

4. The Trial Court disbelieved the oral sale and decreed the suit. However, on appeal by the defendants, the First Appellate Court reversed



the findings of the Trial Court and dismissed the suit.

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5. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiff had come up by way of this Second Appeal. On 10.02.2020, the above Second Appeal was admitted on the following substantial question of law:

“ Whether the lower Appellate Court is correct and justified in dismissing the suit even after holding that the oral sale by the plaintiff's father-in-law in favour of the defendants is not acceptable and disbelieved by the Court?”

6. I have heard Mr. S.Kamadevan, learned Counsel for appellant, Mr. S.Mukunth, learned Senior Counsel appearing for M/s Sarvabhauman Associates for respondents 2 to 4 and 7 to 9 and Mr.V.Ramesh, learned Government Advocate for respondents 5 and 6.

7. The learned counsel for the appellant would submit that the First Appellate Court has erroneously overturned the findings of the Trial Court and failed to see that after having disbelieved oral sale, the defendants having also set up a plea of adverse possession, could not be sustained in the light of claim of title under an oral sale by Ramasamy. He would further



state that in the documents exhibited, the patta number has been mentioned and therefore, the First Appellate Court was wrong in finding that the plaintiff had not produced revenue records in support of plea of oral partition and also mutation in the name of Ramasamy. The learned counsel would also contend that when the other two brothers had admittedly sold 1 acre and 28 cents, it only established the oral partition and the remaining 64 cents would only belong absolutely to Ramasamy, father in-law of the plaintiff.

8. Per contra, the learned Senior Counsel, Mr. S.Mukunth would contend that the plaintiff's husband, one Srinivasan was the son of Ramasamy, who died only on 01.01.2012 and at no point of time during his lifetime he had questioned the oral sale that had taken place in the year 1962. He would also further state that for more than 40 years, the defendants had been in possession and enjoyment of the suit property and by oral and documentary evidence, the defendants have established that they have been in separate possession of the suit properties and therefore, prayed for the dismissal of the Second Appeal.

9. The learned counsel for the appellant would place reliance on the decision of the Hon'ble Supreme Court in the case of *Arumugham (Dead)*



By *Lrs. And Ors vs Sundarambal and Anr* reported in 1994 (4) SCC 350,

where the Hon'ble Supreme Court held that when both parties adduce evidence, burden of proof would lose its relevance in a suit for declaration and for permanent injunction. Per contra, the learned Senior Counsel would place reliance on the decision of this Court in the case of *K.Kasinathan and Anr vs N.Umashankar* reported in 2020 (1) CTC 246, where this Court held that under Section 54 of the Transfer of Property Act, 1882, only two modes of transfer of an interest in an immovable property are contemplated, namely (i) either by a registered instrument, in case of an immovable property having a value of more than Rs.100/- or, (ii) by delivery of possession, in case immovable property having a value of less than Rs.100/-. This Court held that a method, namely a transfer by way of an unregistered instrument is never contemplated under Section 54 of the Transfer of Property Act, 1882. However, having held so, this Court found that the plaintiff therein had perfected the title to the suit property by adverse possession and on that ground, granted relief to the plaintiff.

10. Having considered the rival submissions advanced by the learned counsel for the appellant and the learned Senior Counsel for the respondents and having gone through the pleadings, oral and documentary evidence as



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well as the judgements of the Courts below, I find that there is no dispute with regard to the 64 cents being allotted to one of the three brothers, namely Ramasamy. The only issue is with regard to alleged oral sale by Ramasamy to the father of the defendants. It is the case of the defendants that Ramasamy had sold his 64 cents to their father for a consideration of Rs.50/- , by way of an oral sale. As rightly held by this Court in *Kasinathan's* case, referred herein supra, the oral sale can only be by either of the two modes set out in Section 54 of the Transfer of Property Act, 1882. A person setting up or pleading an oral sale has to either establish that there is a written sale deed and since the value is less than Rs.100/-, the same need not be registered or alternatively, he has to establish that sale has been completed by way of delivery of possession of property, value of which is less than Rs.100/-. In view of the ratio laid down in *Kasinathan's* case, referred herein supra and applying the same here, the defendants have not been able to satisfy the plea of oral sale. However, it is to be seen that the defendants have succeeded in their plea regarding adverse possession.

11. The defendants have filed Exs.B7 and B8. Ex.B7 is dated 07.08.1969 and Ex.B8 is dated 25.08.1986. In Ex.B7, the boundaries are mentioned as Kathirvel Pillai's lands, who is the father of the defendants.



The defendants have also exhibited revenue records to show mutation right from the year 1981 to as late as 1995. Most importantly, the husband of the plaintiff, namely Srinivasan, who was very much alive till 2012, who died just prior to the filing of the suit by his wife, never questioned the mutation of records in the name of the defendants' father/defendants and also did not question the enjoyment of the suit properties by the defendants. In fact, I find from the evidence that P.W.2, one Ramalingam has stated that he is the nephew of Ramasamy, i.e., the father in-law of the plaintiff. He has further stated that after the death of Ramasamy, patta was mutated in the name of his son Srinivasan and that he was not aware if the said Srinivasan was paying kists and also pleaded ignorance of the alleged oral sale in favour of Kathirvel Pillai.

12. P.W.1, namely the plaintiff, has not been able to establish that there was mutation of revenue records in the name of her husband, Srinivasan after the death of the father in-law. Further, it is seen that even during the lifetime of Ramasamy, he did not question the mutation of records in the name of the father of the defendants, namely Kathirvel Pillai and for more than four decades, the plaintiff's father in-law nor her husband



have questioned the enjoyment of the suit properties by the defendants.

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13. The ratio laid down in *Kasinathan's* case, referred herein supra, would squarely apply to the facts of the present case. Even though the defendants have not established the plea of oral sale set up by them, the defendants have at least established to be in hostile, continuous and open possession and enjoyment of the suit property, adverse to the interest of Ramasamy and his son Srinivasan. The defendants have filed documentary evidence in this regard to fortify their contentions regarding claim to the suit property by way of adverse possession.

14. The First Appellate Court has rightly held that the plaintiff, despite claiming that her husband had obtained patta in his name after the demise of his father Ramasamy, did not produce the same and on the contrary, the defendants have established their plea of adverse possession.

15. I do not find any illegality or perversity in the findings arrived at by the First Appellate Court, warranting interference under Section 100 of the Code of Civil Procedure, 1908. In fine, the substantial question of law is answered against the appellant. The Second Appeal is dismissed.



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Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

05.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Principal Subordinate Judge, Ariyalur District.
2. The Principal District Munsif, Ariyalur District.
3. The District Collector, Collectorate, Ariyalur.
4. The Tahsildar, Taluk Office, Ariyalur.

P.B.BALAJI, J,

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Pre-delivery Judgment in



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