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S.A.No.211 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

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

S.A.No.211 of 2018 and
C.M.P.Nos.5406 of 2018 and 6681 of 2019

G.Veeraragavan

...Appellant

Vs.

1. Subramani
2. Saroja
3. Raman
4. Perumal
5. V.Madhavan

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 04.08.2014 passed in A.S.No.63 of 2011, on the file of the Subordinate Judge, Ranipet, Vellore, upholding the decree and judgment dated 24.09.2010 passed in O.S.No.105 of 2006, on the file of the District Munsif cum Judicial Magistrate No.1, Walajah, Vellore District.

For Appellant	: Mr.T.P.Prabakaran
For R1 to R4	: Mr.P.Mani
For R5	: No appearance



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JUDGMENT

The unsuccessful first plaintiff before both the Courts below has filed the present second appeal.

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.

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

The suit properties are described under two heads. The 'A' schedule property is a land in S.No.145/1 of Padi Village, Arcot Taluk, Vellore District, measuring 0.15 acres out of 0.30 acres within the boundaries stated therein. The 'B' schedule property is described as 1/2 share in the Well situate in 'A' schedule property. The plaintiffs have filed the suit for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties. The case of the plaintiffs is that the suit properties originally belonged to one Chengalvaraya Mudaliar. He had two sons by names



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Sambasiva Mudaliar and Govindasamy Mudaliar and the two sons entered into a partition deed dated 29.04.1953 (Ex.A1). In the partition deed, Govindasamy Mudaliar was allotted to 15 cents of land and Sambasiva Mudaliar was allotted the remaining 15 cents. Govindasamy Mudaliar sold his share in favour of the first plaintiff through a registered Sale deed, dated 13.02.1991 (Ex.A2). Similarly, Sambasiva Mudaliar sold his share through a registered sale deed, dated 31.10.1977 in favour of the father of the second plaintiff. Thus the plaintiffs are in continuous possession over the suit properties. According to them, the defendants are attempting to trespass into the suit properties and one such attempt was made during the first week of May 2006. Hence, the suit.

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

- i. The suit properties have not been described properly in the plaint.
- ii. The property in survey number 145/1 was sold to one Gangu Chettiar through a court auction sale in I.P.244/28 on the file of the Madras High Court (Ex.B1).



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- iii. Ever since the date of purchase, Gangu Chettiar was in possession of the suit properties and thereafter his grandson Parasurama Chettiar who succeeded to the estate sold the same to the vendors of the defendants.
- iv. There was a partition in the family of the defendants and patta dated 04.03.2006 (Ex.B3) was also issued in favour of the defendants. The plaintiffs do not have any right over the suit properties and therefore the suit deserves to be dismissed.

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

- "i. Whether the plaintiffs are entitled for an order of injunction restraining the defendants and their men from interfering with plaintiffs peaceful possession and enjoyment of the A and B Schedule property?*
- ii. To what relief is the plaintiffs entitled?"*



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6. In the trial Court, the plaintiffs examined themselves and marked Ex.A1 to Ex.A3. The first defendant examined himself and marked Ex.B1 and Ex.B5.

7. After full contest, the learned District Munsif cum Judicial Magistrate No.1, Walajah, Vellore District, vide his decree and judgment dated 24.09.2010, dismissed the suit filed by the plaintiffs on the following grounds:- :

- i. The plaintiffs have not adduced any acceptable evidence to show that they are in possession of the suit properties.
- ii. The Revenue records such as Patta, Chitta and Adangal have not been filed on the side of the plaintiffs.
- iii. The plaintiffs have not adduced any evidence to show that Chengalvaraya Mudaliar owned the suit properties.
- iv. On the other hand, the defendants have claimed title of the property in survey number 145/1 measuring 4.25 acres through the Court auction sale made in I.P.244/28 on the file of the Madras High Court, Chennai in favour of one Gangu Chettiyar (Ex.B1)



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- v. Gangu Chettiar's grandson sold the suit properties to the vendors of the first defendant Subramani and one Dhanalakshmi through a sale deed.
- vi. Patta was also issued in favour of the defendants by the Revenue Authorities as is seen from Ex.B3.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiffs filed an appeal in A.S.No.63 of 2011, before the Subordinate Judge, Ranipet, Vellore. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court, vide her decree and judgment dated 04.08.2014, as against which the present second appeal is filed.

9. Heard Mr.T.P.Prabakaran, learned counsel for the appellant and Mr.P.Mani, learned counsel for the respondents 1 to 4.

10. The plaintiffs have filed the suit for a bare injunction based



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on the sale deeds, dated 13.02.1991 (Ex.A2) and 31.10.1977 (Ex.A3) allegedly executed by the sons of Chengalvaraya Mudaliar. According to the plaintiffs, the suit properties were originally owned by Chengalvaraya Mudaliar and that there was a partition in their family on 29.04.1953. The plaintiffs have not stated as to how Chengalvaraya Mudaliar became entitled to the suit properties. Except the partition deed dated 29.04.1953 (Ex.A1), no other documents were filed by the plaintiffs to show that their predecessors in title had a right and title over the suit properties.

11. It is true that in a suit for bare injunction, the title of the suit properties need not be gone into. However, in the instant case, the defendants have created a cloud in the title of the plaintiffs over the suit properties by adducing acceptable evidence in their favour. When the title itself is questioned, the plaintiffs ought to have amended the plaint and sought for a declaration of their title to the suit properties. Moreover, the plaintiffs have not adduced any acceptable evidence to show that they are in possession of the suit properties ever since the date of purchase, especially when the suit properties are agricultural lands.



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The Adangal extracts have not been adduced by them. Further, the first plaintiff during the course of cross examination admitted that he obtained patta only for two ares in survey number 145/1A and not for the entire suit property.

12. A perusal of the evidence adduced on the side of the defendants clearly shows that the property in survey number 145/1 measuring 4.25 acres was sold through court auction sale in I.P.244/28 on the file of the Madras High Court (Ex.B1) in favour of Gangu Chettiar and his grand son Parasurama Chettiar sold the properties to the vendors of the first defendant. The first defendant purchased the suit properties through a registered sale deed dated 22.05.2006 (Ex.B2). The patta for the suit property also stands in the name of the defendants as is seen from Ex.B3. In the circumstances, the observations made by both the Courts below that the plaintiffs have not adduced any evidence to substantiate their contentions, cannot be found fault with. In fact, there is no substantial question of law involved in the present appeal.



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13. It is pertinent to point out that Section 100 CPC is a jurisdiction confined to substantial questions of law only. In the decision in **Madamanchi Ramappa and Another Vs Muthalur Bojjappa** reported in **(1964) 2 SCR 673**, the Apex Court observed as follows:

"12.The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition.

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If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

14. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.
- ii. The decree and judgment dated 04.08.2014 passed in A.S. No.63 of 2011, on the file of the Subordinate Judge, Ranipet, Vellore, and the decree and judgment dated 24.09.2010 passed in O.S. No.105 of 2006, on the file of the District Munsif cum Judicial Magistrate No.1, Walajah, Vellore District, are upheld.

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

1. The Subordinate Judge, Ranipet, Vellore.
2. The District Munsif cum Judicial Magistrate No.1,
Walajah, Vellore District
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

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