



S.A.No.62 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.62 of 2021

and

C.M.P.No.1427 of 2021

Pavala Rosaniammal

... Appellant

Vs.

1.Udhayakumar

2.Pichaimuthu

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the judgement and decree passed in AS.No.91/2018 dated 12/03/2019 on the file of the court of II Addl. Dist. and Sessions judge



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at Chidambaram in confirming the judgement and decree passed in OS No.190/2012 dated 27/08/2015 on the file of the court of Addl. Dist. Munsif, Chidambaram.

For Appellant : M/s.A.Muthukumar

For Respondents : M/s.K.Venkateswar [R.1]

: Not ready in notice [R.2]

JUDGEMENT

The 1st defendant is the appellant before this Court challenging the judgement and decree passed by the II Additional District and Sessions Judge, Chidambaram in A.S.No.91 of 2018 in and by which the learned Judge has confirmed the judgement and decree passed by the Additional District Munsif, Chidambaram in O.S.No.190 of 2012.



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2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court, namely, Additional District Munsif, Chidambaram in O.S.No.190 of 2012.

3. The plaintiff had filed a suit for a permanent injunction restraining the defendants, their men, agents and persons claiming under them from in any manner interfering with the plaintiff's lawful, peaceful possession and enjoyment of the suit properties.

4. The plaintiff would contend that the suit properties originally belonged to one Muthaiya Mudhaliar who had 5 wives and 2 sons. The first four wives of Muthaiya Mudhaliar had pre-deceased him and through his 5th wife, he had two sons named Velayutham Mudhaliar and Nataraja Mudhaliar.



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5. On 12.02.1946, the said Muthaiya Mudhaliar had executed a registered settlement deed in the form of a maintenance deed in favour of his 5th wife, Karpagam Ammal in respect of the suit schedule properties and other properties. In that settlement, Karpagam Ammal was given a life estate to possess and enjoy the suit properties without any right to alienate or transfer the same. After her death, the sons were to inherit the suit properties.

6. During her lifetime, Karpagam Ammal had leased out the suit properties to one Kuppusamy, the father of the plaintiff. On 21.11.1992 Karpagam Ammal passed away and after her death, her son, Nataraja Mudhaliar and grandson through her elder son, Velayutham Muthaliar had taken possession of the suit properties and



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other properties in keeping with the terms of the settlement deed executed by Muthaiya Mudhaliar on 12.02.1946.

7. Even after the death of the Karpagam Ammal, the plaintiff's father continued to be in possession and enjoyment of the suit properties as a cultivating tenant and had been paying the agreed lease amount without any default.

8. The father of the plaintiff thereafter purchased the suit properties and other properties under a registered sale deed dated 22.02.2001 from Nataraja Mudhaliar and late Velayutham Muthaliar's son of Parimalaselvam. The patta was also transferred in the name of the plaintiff's father and he was enjoying the said properties as the absolute owner.



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9. The plaintiff would further submit that his father had executed a settlement deed in respect of the suit properties in his favour and handed over physical possession of the same. From the date of the sale, the plaintiff has been enjoying the suit properties by cultivating thereupon. While so, the defendants who are utter strangers to the suit properties had attempted to trespass into the same on 15.08.2012 and therefore the plaintiff had come forward with the suit in question

10. The 1st defendant had filed a written statement and an additional written statement denying the allegation contained in the plaint and stating that the suit properties have been mentioned in the plaint without furnishing the boundaries which would only go to show that the plaintiff had no manner of right, title and interest over the suit properties. The 1st defendant had stated that she has no interest over



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the 2nd item of the suit property. However, the 1st item of the suit property originally belonged to Velayutham. One Pushpavalli purchased 28 cents from out of 56 cents in R.S.No.23/2 and 17 cents from out of 34 cents in R.S.No.25/5A, under a registered sale deed dated 05.09.1962. The Survey number was wrongly mentioned as R.S.No.25/5A instead of Survey No.23/3A. This property was sold by her to one Dhanabal under a registered sale deed dated 27.01.1975 for a valid consideration. In the sale deed in favour of Dhanabal the following boundaries had been given: East by road; West by Muthuvel's land; North by Rajamanickka Padayachi's land and South by R.S.No.23/2. The 1st defendant would submit that he had purchased this property from Dhanabal under a registered sale deed dated 04.10.1946 and from the date of the purchase, he has been in possession and enjoyment of the same.



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11. The 1st defendant would further submit that the plaintiff's father had never purchased the suit properties under a registered sale deed dated 22.02.2001 and the plaintiff's father's vendors did not have the right to sale the same to him. Neither the vendors of the plaintiff's father nor the plaintiff had enjoyed item No.1 of the suit property at any point in time. Therefore, the sale deed executed in the name of Kuppusamy, the plaintiff's father was a sham and nominal one and would not convey title to him. Since Kuppusamy had no title to item no.1 of the suit property, he could not execute a settlement deed in favour of the plaintiff. Therefore, the suit for bare injunction without the prayer for declaration was clearly not maintainable. Therefore, the 1st defendant sought for the dismissal of the suit.

12. The Trial Court on perusal of the pleadings and records had framed the following issues:-



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1. Whether the plaintiff is entitled for the relief of permanent injunction against defendant?

2. To what other reliefs plaintiff is entitled for?

13. The plaintiff had examined himself as P.W.1 and one Mr.Nataraj Mudaliyar and Mr.Kuppusamy as P.W.2 and P.W.3 and Ex.A.1 to Ex.A.18 were marked. The 1st defendant had examined herself as D.W.1 and one Mr.Pazhanivel as D.W.2 and marked Ex.B.1 to B.4. C.W.1 and C.W.2 were examined as Court witnesses and Ex.X.W.1 and X.W.2 were marked as third party evidence.

14. The learned Trial Judge on considering the evidence on record decreed the suit as prayed for. The learned Trial Judge had observed that the plaintiff had proved his possession whereas the defendants had failed to prove their case. Challenging the said



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judgment and decree the 1st defendant had filed A.S.No.91 of 2018 on the file of the II Additional District and Sessions Court, Chidambaram.

15. The learned Appellate Judge by his judgement and decree dated 12.03.2019 had dismissed the appeal confirming the judgment and decree of the Trial Court. Aggrieved by the same, the 1st defendant is before this Court.

16. Notice was directed to the respondents on 08.02.2021 and the respondents have also entered appearance.

17. Mr.A.Muthukumar, learned counsel appearing on behalf of the appellant would submit that before the Lower Appellate Court the



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appellant/1st defendant had filed an interlocutory application in I.A.No.27 of 2019 for receiving additional document which were the field FMB in respect of the Survey Nos.23 and 25. The Lower Appellate Court had allowed the application and marked the documents as Ex.B.5 and Ex.B.6 without oral evidence being adduced and an opportunity of cross-examination being given.

18. The learned counsel would submit that that the sale deed in favour of the plaintiff does not contain the details of the boundaries. He would submit that the 1st defendant would stake a claim to the 1st item of the suit schedule property on the basis of a registered sale deed marked as Ex.B.1 dated 27.01.1975 executed by Pushpavalli in favour of Dhanabal, who in turn had sold the same to the 1st defendant under a sale deed dated 04.10.1976 (Ex.B.2). Under this deed the 1st item of the suit property was sold to the 1st defendant.



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Possession was also handed over to her and though there was a mistake in the sale deed regarding the survey number, the same had been corrected as Survey No.23/3A in the place of Survey No.23/5A. He would further submit that Ex.B.4, Adangal extract would also show that the 1st defendant is cultivating the lands in S.No.23/3A.

19. He would further submit that the Trial Court had dismissed the suit on the ground that the defendants had not proved their right to the suit properties. Therefore, the 1st defendant had taken out an application for receiving additional documents. He would therefore, submit that the matter should be remitted back to the Lower Appellate Court in order to enable the parties to let in evidence on these documents.

20. Meanwhile, the plaintiff/1st respondent had taken out an



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application for receiving 2 documents, namely, a) Partition deed dated 12.12.1954 registered as Document No.2477 of 1954 and b) Sale deed dated 05.09.1962 registered as Document No.2002 of 1962. The learned counsel for the 1st defendant/appellant has no objection to the same being allowed provided the parties are permitted to examine and cross-examine the witnesses on these documents as well. The documents that are now sought to be marked by the plaintiff/1st respondent are the parent documents of the suit properties through which the plaintiff gets a right over the same.

21. Heard the counsels on either side and perused the records.

22. A perusal of the judgement and decree of the Courts below would indicate that the entire issue boils down to the identification of



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the suit properties since the suit documents filed, namely, the sale deed in favour of the plaintiff etc; has not been demarcated by boundaries but are simply referred to by the extent and the survey numbers. In fact, the 1st defendant had also purchased the property comprised in S.No.23/3A and by mistake in the sale deed the survey number of the property has been described as S.No.23/5A. A rectification deed had also been executed in this regard to correct the survey number.

23. The plaintiff's documents particularly the sale deeds do not describe the suit properties properly and it is for this reason that the plaintiff/1st respondent has taken out an application for receiving the certified copies of two documents. As already stated the 1st defendant/appellant has no objection to the receipt of the documents and the marking of the same. However, this consent is subject to the



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1st defendant being granted a liberty to examine and cross examine the witnesses in this regard. Likewise, the documents of the 1st defendant have been received as evidence by the Lower Appellate Court without affording an opportunity to parties to let in oral evidence on the documents.

24. In these circumstances, the above Second Appeal is allowed and the matter is remitted back to the Lower Appellate Court, namely, The II Additional District and Sessions Judge at Chidambaram with the following directions that the Lower appellate Court shall permit the plaintiff and the defendants to adduce oral evidence on the documents marked today as Ex.A.19 and Ex.A.20 and the documents already marked by the Lower Appellate Court as Ex.B.5 and Ex.B.6 and thereafter pass judgment. The said exercise shall be completed within a period of 2 months from the date of the receipt of the



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judgement and the records. The Registry is directed to forthwith send the records to the lower Appellate Court, namely, The II Additional District and Sessions Judge at Chidambaram. No costs. C.M.P.No.1427 of 2021 is therefore closed.

05.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Addl. Dist. Munsif, Chidambaram.
2. The II Additional District and Sessions judge at Chidambaram.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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