



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.339 of 2018
and CMP. No.9431 of 2018

Babu

...Appellant

Vs.

1.Saraswathi Kannan

2.K.S.Kamalakannan

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Decree and Judgment dated 22.02.2017 passed in A.S. No.2 of 2016 on the file of I Additional District Judge, Tindivanam reversing the Decree and Judgment dated 29.10.2013 made in O.S. No.71 of 2010 on the file of the Principal Subordinate Judge, Tindivanam.

For Appellant : Mr.S.Dawood Khan

For Respondents : Mr.T.Dhanasekaran



JUDGMENT

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The plaintiff who initially succeeded in a suit for declaration and permanent injunction, but suffered a reversal finding at the hands of the First Appellate Court is the appellant before me.

2. The brief and necessary material facts that are required to adjudicate the above Second Appeal are that the plaintiff purchased 10 cents from the brother of the defendants, one Mr Krishnamurthy in and by a sale deed dated 26.05.2010. According to the plaintiff, the suit properties are ancestral properties of one Kannammal who had sold the same in favour of Mangammal, who was enjoying the suit property as her own. According to the plaintiff, her vendor Krishnamoorthy i.e., the brother of the defendant was exclusively enjoying the suit property, paying kist and being a bonafide purchaser for value and being in possession, the plaintiff was entitled to the suit being decreed as the defendant had no title and no right to interfere with plaintiff's peaceful possession and enjoyment.

3. The defendants resisted the said suit and filed a written statement



stating that the mother of the plaintiff's vendor viz., Mangammal was blessed with a son and three daughters. Her son, Krishnamoorthy alone conveyed the property in favour of the plaintiff, leaving out daughters Kasiammal, Jaya and Sarojini. The said three daughters of Mangammal had executed a sale deed in respect of their 3/4th share in favour of the first defendant for valuable sale consideration, based on which the defendants are in possession and enjoyment of the suit property having obtained patta also. According to the defendants, the plaintiff was fully aware of the entitlement of 3/4th share of the defendants and therefore the suit was sought to be dismissed.

4. Before the Trial Court, plaintiff himself as P.W.1 and Krishnamoorthy, Selvaraji, Krishnamoorthy were examined as P.Ws.2 to P.W.4. Exs.A1 to A15 were marked on the side of the plaintiff. On the side of the defendants, two persons viz., Kamalakannan, 1st defendant and one Kasiammal were examined as D.W.1 and D.W.2 and Exs.B1 to B10 were marked.

5. The Trial Court decreed the suit based on Ex.A12 letter addressed

to Tamil Nadu Electricity Board. Challenging the decree in favour of the plaintiff, the defendants preferred A.S.No.2 of 2016. The First Appellate Court allowed the appeal, setting aside the findings of the Trial Court. Aggrieved by the same, the plaintiff is on Second Appeal.

6. The following substantial questions of law have been suggested by the appellants:

1) Whether the First Appellate Court is right in ignoring Ex.A1, sale deed dated 26.05.2010 executed in favour of the appellant by P.W.2, which came into existence much before Ex.B7, sale deed dated 02.06.2010 in favour of the first defendant, to grant a declaratory relief in favour of the appellant?

2) Whether the interpretation given by First Appellate Court in Para No.29 of the judgment to Ex.A12, letter addressed by the deceased Mangammal to the Assistant Engineer, TNEB and consequently denying the declaratory relief sought for by the appellant?

3) Whether the First Appellate Court failed to consider that Section 14 of Hindu Succession Act has no application to the case where the sisters of P.W.2 have abandoned their right over the suit



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property leaving the suit property to continue in exclusive possession and enjoyment of P.W.2 for a long time?

4) Whether the First Appellate Court failed to note that Angammal, one of the sisters of P.W.2 stood as a witness to the sale deed dated 31.05.2004, Ex.A15 would operate as an estoppels as against Ex.B7, sale deed executed by her along with two others in favour of the first defendant/first respondent herein?

5) Whether the First Appellate Court is justified in shifting the burden on the plaintiff/appellant herein when he has proved his case beyond any reasonable doubt?

6. I heard Mr.S.Dawood Khan, learned counsel for the appellant and Mr.T.Dhanasekaran, learned counsel for the respondents.

7. The learned counsel for the appellant would submit that the Trial Court had rightly relied upon Ex.A12 under which the mother, Mangammal had specifically stated that Krishnamoorthy alone was entitled to the suit property and therefore the said document ought to have been treated as the last will and testament of the mother, Mangammal. Further, he would also



place reliance on Ex.B7 in and by which the brother Krishnamoorthy sold a different property in favour of a third party and in the said sale deed, one of his sisters had signed as a witness. Thus, he would contend that the sisters were fully in the know of the fact that the brother, Krishnamoorthy alone was entitled to the properties of the mother Mangammal and they were estopped from claiming any share in the suit property. He would also contend that right from 1970 onwards, the brother has been in absolute possession and enjoyment of the suit property and the sisters have never objected to the same. He would therefore pray for the judgment and decree of the Trial Court being restored.

8. Per contra, the learned counsel for the respondents would state that the Trial Court had arrived at erroneous and incorrect findings which were rightly set aside by the First Appellate Court. He would also state that merely because the one of the sisters had signed as a witness to a sale deed executed by her brother Krishnamoorthy i.e., the vendor of the appellant, she cannot be imputed with knowledge of contents of the document, unless otherwise it has been specifically established by letting in sufficient satisfactory evidence during trial of the suit. He would also state that



Ex.A12 cannot be treated as a Will and at best it was a no objection letter executed by the mother and addressed to the Electricity Board to enable the son to get electricity service connection.

9. Learned counsel for the respondents would also state that if really the said Ex.A12 was a will executed by the mother, then there should have been a pleading in that regard in the plaint itself. Therefore, a new plea cannot be raised by the plaintiff in order to attempt filling up lacuna on his side. He would further submit that the First Appellate Court has rightly appreciated the oral documentary evidence and proceeded to allow the appeal, setting aside the judgment and decree of the Trial Court.

10. I have gone through the judgment of the First Appellate Court. The First Appellate Court has rightly discussed the legal position with regard to a testamentary instrument and rejected Ex.A12. Equally, the First Appellate Court has rightly held that merely because the sister had signed one of the sale deeds, it cannot be said that she attested the document after knowing the contents and refused to accept the argument of estoppel advanced by the learned counsel for the plaintiff. The First Appellate Court



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has also rightly found that despite the plaintiff pleading an oral partition, the plaintiff did not succeed in establishing the same at Trial and further found that there was also no mutation of revenue records in terms of the alleged oral partition.

11. Thus, I find that that there is absolutely no patent error or illegality in the findings arrived at by the First Appellate Court, warranting interference U/s. 100 of C.P.C by this Court in the Second Appeal. I do not find any substantial questions of law arising for consideration in the above Second Appeal.

In fine, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

Index : Yes/No
Internet : Yes/No
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To

1. The I Additional District Judge, Tindivanam.
2. The Principal Subordinate Judge, Tinidvanam.



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P.B.BALAJI, J,

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Pre-delivery Judgment in

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and

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