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S.A.Nos.1235 & 1236 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.Nos.1235 & 1236 of 2011

and

M.P.Nos.1 & 1 of 2011

S.A.No.1235 of 2011

R.Palanisamy

...Appellant / Appellant /
Plaintiff

-Vs-

M.Karuppusamy

...Respondent / Respondent
Defendant

S.A.No.1236 of 2011

R.Palanisamy

...Appellant / Appellant /
Defendant

-Vs-

M.Karuppusamy

...Respondent / Respondent
Plaintiff

Prayer in S.A.No.1235 of 2011:- Second Appeal preferred under section 100 of CPC against the judgment and decree dated 12.08.2010 made in A.S.No.19 of 2009 on the file of the Sub Court, Perundurai, confirming the



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judgment and decree dated 28.11.2008 made in O.S.No.100 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

Prayer in S.A.No.1236 of 2011:- Second Appeal preferred under Section 100 of CPC against the judgment and decree dated 12.08.2010 made in A.S.No.20 of 2009 on the file of the Sub Court, Perundurai, confirming the judgment and decree dated 28.11.2008 made in O.S.No.195 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

For Appellant

in both appeals : Mr.N.Manokaran

For Respondent

in both appeals : Mr.S.Kaithamalai Kumaran

COMMON JUDGMENT

Both the second appeals are arising out of the suits filed between the same parties namely one Palanisamy and Karuppusamy. As the facts of both the cases are one and the same and the suit properties which are the subject matter of both the cases are comprised in the same survey number, the Trial Court and the First Appellate Court have rendered common Judgments and



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Decrees.

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2. The suit in O.S.No.100 of 2006 was filed by Palanisamy as against the defendant, Karuppusamy for the relief of permanent injunction restraining the defendant from disturbing the peaceful possession and enjoyment of the suit scheduled property, i.e., the lands, godowns, huller godown etc in R.S.No.46, Erumakkaranpalayam Village, Uthukuli Panchayat, Perundurai Taluk, Kunnathur, Gobi registration District, Erode District to an extent of 68 cents.

3. O.S.No.195 of 2006 was filed by the said Karuppusamy who is the defendant in O.S.No.100 of 2006. The suit was filed for partition and separate possession of the property to an extent of 15.30 cents out of the aforesaid extent of 68 cents in R.S.No.46 which is the suit schedule property in O.S.No.100 of 2006.

4. The brief case of the plaintiff and defendant in O.S.No.195 of 2006 is as follows:

The plaintiff and the defendant had jointly purchased the suit property from M.Mahalakshmi and others by virtue of sale deed dated



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29.01.1997 and they have been enjoying the suit property in common without any partition. The suit property is a rice mill godown and the appurtenances thereof. The plaintiff has purchased a common half share in 52.75 cents out of the total extent of 68 cents which is the eastern part of the property, from one Subbulakshmi by registered sale deed dated 24.01.1997 and the remaining common half share in the aforesaid 52.75 cents belongs to the defendant. Further, the plaintiff sold the said common half share in 52.75 cents out of 68 cents to the defendant by virtue of registered sale deed dated 10.03.2004. As such, the defendant became the absolute owner of the said 52.75 cents out of 68 cents.

5. Some misunderstanding arose between the plaintiff and the defendant in enjoying their respective half share in the remaining 15.30 cents in common and the plaintiff demanded the defendant to divide the suit property during the last week of March 2006. But the defendant did not come forward for amicable partition. While the matter stood thus, the defendant had filed the suit against the plaintiff in O.S.No.100 of 2006 on the file of the learned District Munsif, Perundurai for permanent injunction in respect of the suit property and properties situated on the eastern side of



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the suit property. The plaintiff and the defendant are in possession and enjoyment of the suit property in common and hence the plaintiff filed the suit for partition and other reliefs.

6. The defendant filed the written statement denying all the averments in the plaint as false since the plaintiff has not filed the original sale deed dated 29.01.1997. As per the sale deed dated 29.01.1997, both the plaintiff and the defendant are the owners of the suit properties. Subsequently, the plaintiff has sold his share in the suit property to the defendant on 10.03.2004 and thereafter the defendant has become the absolute owner of the suit property and he is enjoying the same. He has also obtained patta and he has been paying the property tax, electricity bill and enjoying the suit properties without any interruption and after selling the property, due to hike in the land value, on 01.04.2006, the plaintiff attempted to disturb the possession of the defendant. The defendant has filed the suit in O.S.No.100 of 2006 for permanent injunction and only as a counter blast to the said suit, the plaintiff has filed the present suit. Hence the suit is liable to be dismissed.



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7. The following issues were framed in O.S.No.195 of 2006:

a)Whether the plaintiff is entitled for the relief of partition and separate possession as prayed for?

b)To what other relief, the plaintiff is entitled?

8. Brief case of the plaintiff and defendant in O.S.No.100 of 2006 are as follows:

The plaintiff had purchased the shares of Mahalakshmi and Rajeswari in the suit properties by way of registered sale deed and thereafter, again the plaintiff and the defendant have purchased the remaining shares in the suit properties on 29.01.1997 by way of registered sale deed. Thus, the plaintiff and the defendant had become the absolute owners of the suit properties. Thereafter, the defendant sold his share in the suit properties in favour of the plaintiff on 10.03.2004 and on the basis of the same, the plaintiff obtained patta on 26.11.2004 and he became the absolute owner of the suit property and he has been in possession and enjoyment of the same.



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9. The defendant having sold the suit properties developed grudge and demanded money from the plaintiff. As the plaintiff refused to give money, the defendant is causing hindrance in the peaceful possession and enjoyment of the suit properties. On 01.04.2006, all of a sudden, the defendant attempted to trespass into the suit properties and disturb the possession and enjoyment of the plaintiff. Hence the plaintiff has filed the suit for permanent injunction.

10. The defendant filed the written statement and contended that the defendant did not sell the entire share in the suit property to the plaintiff at any point of time. The defendant and the plaintiff jointly purchased the extent of 15.30 cents on the western side out of 68 cents in the suit property by way of registered sale deed dated 29.01.1997. The plaintiff never purchased the property from the defendant covered under the sale deed dated 29.01.1997. The defendant has sold the property to the plaintiff which has been purchased from one Subbulakshmi under sale deed dated 24.01.1997. As such the plaintiff became absolutely entitled to 52.75 cents of property on the east out of 68 cents in the suit property and the remaining



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15.30 cents on the west part of the suit property, jointly belongs to the plaintiff and the defendant. The plaintiff and the defendant are in possession and enjoyment of the same in common without any permanent partition.

11. The defendant contended that, there arose misunderstanding between the plaintiff and the defendant in the business. Therefore, the plaintiff has filed the present suit out of vengeance. The description of property is not correct and the plaintiff has obtained patta behind the back of the defendant and it will not bind the defendant. Hence, he prayed for dismissal of the suit.

12. From the above pleadings, the following issues were framed in O.S.No.100 of 2006 by the Trial Court.

a)Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the suit?

b)To what other relief is the plaintiff entitled?

13. Since the above suits are related to the same property and as the



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parties are one and the same, the Trial Court tried the suits jointly and evidence recorded in O.S.No.195 of 2006 in common. Before the Trial Court, the plaintiff, Karuppusamy was examined as P.W-1. On the side of the plaintiff, Exs.A-1 to A-4 were marked. The defendant, Palanisamy was examined as D.W-1 and one Deivasigamani was examined as D.W-2. On the side of the defendant, Exs.B-1 to B-28 were marked.

14. The Trial Court while analysing the documents and oral evidence produced on either side, had come to the conclusion that the plaintiff in O.S.No.195 of 2006 is entitled for partition as prayed for and decreed the suit. In view of the findings given in favour of the plaintiff, Karuppusamy, the suit in O.S.No.100 of 2006 for permanent injunction was dismissed.

15. Aggrieved by the same, the defendant in O.S.No.195 of 2006 who is the plaintiff in O.S.No.100 of 2006 preferred two appeals against the common judgment and decree of the Trial Court in both the suits respectively. The appeal in A.S.No.19 of 2009 was filed against the judgment and decree in O.S.No.100 of 2006 and the appeal in A.S.No.20 of 2009 was filed against the judgment and decree in O.S.No.195 of 2006



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dated 28.11.2008.

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16. The First Appellate Court has taken the following points for determination in both the appeals:

a)Whether the respondent has sold his entire share of the suit property in O.S.No.100 of 2006 to the appellant?

b)Whether the respondent has got share in the suit property in O.S.No.195 of 2006?

c)Whether the Trial Court has committed any illegalities and irregularities in appreciating the evidence in both the suits?

d)Whether both the appeals have to be allowed?

17. Since the Commissioner's report and sketch have not been marked before the Trial Court, as per the order in I.A.No.437 of 2010, the Commissioner's report and sketch have been marked as Ex.C-1 and Ex.C-2 before the First Appellate Court.

18. The First Appellate Court while examining the correctness of the judgment and decree passed by the Trial Court considered the recitals in



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Ex.A-3 sale deed and found that, as per the recitals in the sale deed, the respondent has not sold his half share purchased under Ex.A-1 sale deed by which an extent of 15.30 cents was purchased by the plaintiff and the defendant in common. The respondent had sold only the half share purchased by him under Ex.A-2 sale deed namely, the half share in 52.75 cents. Therefore, the appellant has become the absolute owner of 52.75 cents which is the eastern part of R.S.No.46 and he had no absolute right in the other portion namely 15.30 cents in R.S.No.46 which is covered under Ex.A-1 sale deed.

19. The First Appellate Court came to the conclusion that, on the basis of the Commissioner's report and sketch, marked under Exs.C-1 and C-2, it cannot be said that the respondent is not in possession and enjoyment of the suit property. Further, the Advocate Commissioner has no *locus standi* to speak about the possession.

20. The First Appellate Court found that the appellant has failed to establish his absolute title and possession over the entire suit property in O.S.No.100 of 2006, whereas, the respondent has proved his right over the



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half share in the suit property in O.S.No.195 of 2006. The First Appellate Court dismissed both the appeals filed by the appellant in A.S.No.19 of 2009 and A.S. No. 20 of 2009.

21. Aggrieved by the judgment and decree passed by the First Appellate Court, the present second appeals are preferred by the unsuccessful appellant, who is the defendant in O.S.No.195 of 2006.

22. The learned counsel for the appellant would contend that the respondent had mislead the Courts below as the entire extent in R.S.No.46 has been purchased by the appellant. The recitals of the sale deed marked as Ex.A-3 was not clearly examined by the First Appellate Court. The Advocate Commissioner's report would clearly show that the appellant is in possession of the entire extent of the property in R.S.No.46.

23. Per contra, the learned counsel for the respondent would contend that the respondent had sold his half share in 52.75 cents out of 68 cents situated on the east part to the appellant by virtue of the registered sale deed dated 10.03.2004. The appellant has become the absolute owner only to the



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extent of 52.75 cents out of 68 cents in the properties. The recitals found in the sale deed marked as Exs.A-1 to A-3 would clearly show that the respondent is entitled to the half share in 15.30 cents purchased vide Ex.A-1.

24. The judgment and decree passed by the First Appellate Court is based on the careful examination of sale deeds dated 24.01.1997, 29.01.1997 and 10.03.2004 which are marked as Ex.A-1 to Ex.A-3. The Trial Court in O.S.No.195 of 2006 and the First Appellate Court in A.S. No.19 of 2009 and A.S. No. 20 of 2009 has categorically come to the conclusion that the respondent has proved his right over the half share in the property to an extent of 15.30 cents out of the entire extent of the suit property in O.S.No.100 of 2006.

25. The appellant has failed to establish the sale of respondent's half share in the said 15.30 cents in his favour. The Courts below have rightly negated the claim of absolute ownership raised by the appellant over the entire extent of 68 cents.

26. On verification of the available records, it is seen that, at the time of admission, only notice was issued to the respondent and this Court had



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not admitted the second appeal on any substantial question of law.

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27. The Hon'ble Supreme Court in catena of cases has categorically held that the High Court shall not interfere in the findings of the First Appellate Court, unless there is a substantial question of law to be decided in the second appeal. It is pertinent to note that, this Court has only issued notice to the Respondent and the second appeal was listed under notice of motion without admitting the same on any substantial question of law.

28. In view of the above, this Court has come to the conclusion that there is no reason to interfere in the judgment and decree of the First Appellate Court.

29. In the result, the Second Appeals are dismissed. The common judgment and decree passed by the Subordinate Court, Perundurai in A.S.No.20 of 2009 and A.S.No.19 of 2009 dated 12.08.2010 are hereby confirmed. No costs. Connected miscellaneous petitions are closed.

18.10.2024

cda

Index : Yes/No

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Speaking/Non Speaking order
Neutral Citation : Yes/No

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To

- 1.The Subordinate Court, Perundurai.
- 2.The District Munsif cum Judicial Magistrate Court,
Perundurai.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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N.SENTHILKUMAR, J.

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