



S.A. No. 1293 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1293 of 2011

and

M.P. No. 1 of 2011

Paramasivam

...Appellant

Vs.

1. Soundarajan
S/o.Azhagappa Udayar

2. Sivakumar
S/o.Azhagappa Udayar
Both are at Mandagapadi Village
Sankarapuram Taluk.

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 31.01.2011 made in A.S. No. 28 of 2007 on the file of the Sub Court, Kallkurichi, confirming the judgment and decree dated 28.09.2006 made in O.S. No. 596 of 2003 on the file of the III Additional District Munsif Court, Kallakurichi.

For Appellant : Ms.A.Nilafer for M/s.R.Meenal

For Respondents : Mr.P.Valliappan, Senior Counsel
for Mr.S.M.S.Shriram Narayanan



JUDGMENT

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The appellant is the plaintiff, who has filed the suit for seeking the relief of permanent injunction and got it dismissed by the Trial Court. The First Appeal preferred by the plaintiff also dismissed by concurring with the judgment of the Trial Court.

2. Short facts on which the appellant /plaintiff has filed the suit runs as under:-

The suit property is situated in Natham Survey No.62/2 within the boundaries as shown in the description of the property measuring an extent of 4000 square feet and the corresponding new Survey No.159/4. The suit property is a vacant site and it was originally assigned to plaintiff's father, viz., Narayanasamy Udayar by the Government on 10.06.1976. After the demise of the plaintiff's father, the plaintiff and his mother, viz., Gnanambal and his younger brother, viz., Sekar had inherited the property as the legal



heirs of their father and they were in enjoyment of the suit property without any resistance from the defendants. As the defendants with an ulterior motive has started to prevent the plaintiff from enjoying the suit property, the suit has been filed by the plaintiff for praying the relief of permanent injunction.

3. The written-statement filed by the defendants is as under:-

The plaintiff has got no right as alleged by him in respect of the suit property. The suit property in Survey No.159/4 is actually 17 cents and that is the ancestral property of the first defendant. The property is in enjoyment of the defendants for managing cattle and has to dump garbage. In Survey No.159/4 there was only one tamarind tree and that was cut by defendants before 25 years ago. Natham Patta No.8 in respect of the suit property stands in the name of the defendants' father Alagappa Udayar. The



property in Survey No.158 is situated on the western side of the suit property and in respect of which the plaintiff's wife Poongodi has filed a suit before the Munsif Court, Kallakurichi in O.S. No. 648 of 1999. In the said suit, the plaintiff was examined himself as PW1 and during the course of his evidence, he has stated that the lands in Survey No.158/28 alone was belonging to him and land in Survey Nos.159/1 and 159/4 did not belong to him and that they were belonging to the defendants. Even in the description of the properties in the said suit, the western boundary for the suit property (of that suit) Survey No. 158/28 has been shown as the property belonging to Alagappa Udayar, who is the father of the defendants. The suit property has got no relevance to the plaintiff. Hence, the suit should be dismissed.

4. The learned counsel for the appellant submitted that even though the assignment has been made in favour of the plaintiff's father that have been produced as exhibits on the side of the plaintiff's, both the Courts below did



not consider the same in the proper perspective. It is further submitted that the First Appellate Court had recorded a finding that in pursuant to the Exhibit A1-Assignment Order, the plaintiff cannot claim possession of the entire extent of 10 acres 45 cents, but what the plaintiff was actually claimed is only an extent of 1 acre 45 cents and not the 10 acres 45 cents. So it is submitted that the suit has to be decreed by relying on Exhibits A1 and A2.

5. The learned counsel for the respondents submitted that both the Courts below have rightly admitted that there is no corresponding entries of the assignment alleged to have been issued in favour of the plaintiff's father, and the plaintiff, who was examined as witness in the earlier suit, has admitted that the plaintiff has got the property only in Survey No.158/28 and the property on the western boundary is shown as site belonging to Alagappa Udayar, who is the first defendant's father.

6. The plaintiff has claimed that title in respect of the suit property measuring 4000 square feet in Survey No.62/2 (new Survey No.159/4) only on the basis of Exhibit A2 Assignment. It appears that Exhibit A1 is the certified copy of the same assignment which has been produced as Exhibit A2.



The specific contention of the respondents/defendants was that the suit property was not assigned in favour of the plaintiff's father and the alleged assignment is not proved. Even though the plaintiff could base title on assignment in favour of his father, the genuineness of the assignment deed has to be established before this Court. In order to prove that as the origin of title for the father of the plaintiff, the Revenue Official, who has been examined as PW4 on the side of the plaintiff has stated in his evidence that in the year 1992, under Natham Nilaudaimai Thittam (UDR Scheme) Patta has been granted in the name of Mr. Alagappa Udayar. He further deposed that there is no detail in the Revenue Records to substantiate the fact that the plaintiff's father has been given with the assignment in respect of Survey No.62/2. Had the petitioner's father been given with the assignment, there would be definitely the relevant entries in the Revenue records as well. The crystal clear evidence of plaintiff would show that the plaintiff's father's name has not been shown in the Revenue Documents in respect of Survey No.62/2. Both the Trial Court and the First Appellate Court were being vigilant before accepting Exhibit A2 as the document evidencing the origin of title for the plaintiff. Apart from the evidence of PW4, (the Revenue Officials), the other evidence that was attracted the attention of the Court was the judgment and decree



passed in O.S.No.648 of 1999. The said suit has been filed by the plaintiff's wife Poongodi in respect the house site in Survey No. 648/19. The plaintiff who was examined as PW1 in the said suit as stated in his evidence that they have right only in Survey No.158/28 and they did not have any right in Survey No.159/1 and 159/4. He has further submitted that the house site comprised in the said survey number belonged only to the defendants. Even in the description of property in the plaint filed in the above suit also the western boundary has been shown as the lands belonging to Alagappa Udayar.

7. The trial Court and the first Appellate Court has found the preponderance of probabilities in favour of the defendants as the plaintiff has failed to prove the genuineness of Exhibit A2. Apart from the absence of relevant entries in the revenue record, the plaintiff has omitted to filing the documents to show the subsequent enjoyment of the plaintiff's father from the date of assignment. Hence, in the absence of any acceptable evidence on the side of the plaintiff, the Trial Court is right in dismissing the suit and the First Appellate Court has also properly scrutinized the appreciation of the trial Court and the grounds of the first appeal, and had chosen to dismiss the appeal by concurring with the judgment of the Trial Court.



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8. The learned counsel appearing for the Appellant submitted that the defendants did not deny genuineness of the Government Assignment. The presumption that the land is not in Exhibit A1 assignment order has been assigned in favour of the plaintiff's grand father. But the fact remains that there is no corresponding entries in the revenue records in respect of the properties alleged to have been assigned by Exhibit A1. Had the Assignment Order been acted upon by putting the plaintiff's grand father in possession of the whole of 10 acres 45 cents in Survey No.62/2, then it would have been possible for the plaintiff to produce the documents evidencing the possession over the suit properties from the date of the Assignment Order. There is a difference between a genuine document and authenticated document. When the authenticity of Exhibit A1 is challenged and pursuant to that the defendants could establish from the revenue records itself that the grand father of the plaintiff had not been in possession over the subject matter alleged to have been given through the Assignment Order - Exhibit A1. When the above contrary fact is substantiated and proved by the defendants, the burden would once again shift upon the plaintiff and the plaintiff has to prove that the Assignment Order is very much acted upon and that the title and possession is settled on the plaintiff's grand father and make it as a conclusive proof. But



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the plaintiff has not made the initial presumption in respect of the Assignment order as a conclusive proof. Further, there is no correlation in the revenue records also to establish the facts that the Assignment Order has been acted upon and the plaintiff's father has been put into possession over the said land and he had been in continuous possession and enjoyment. As the plaintiff is not able to prove the origin of title and possession, it is right for the Courts below to deny the relief sought by the plaintiff.

9. With the above clarifications, this second appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

07.11.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

1. The Judge, Sub Court,
Kallkurichi.
2. The Judge, III Additional District Munsif Court,
Kallakurichi.
3. The Section Officer,
V.R. Section,

10/11



High Court, Madras.

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R.N.MANJULA, J.

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