



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1403 of 2011 and
M.P.No.1 of 2011

1.Natesan
2.Elumalai
3.Amirtham
4.Selvarani
5.Alamelu
6.Andal
7.Silambarasan (minor),
(Rep by his next friend Guardian,
mother Andal)

... Appellants / Defendants

Vs.

1.Munusamy
2.Kalaivani
3.Porkalai
4.Dhanavasuki
5.Ananthayi Ammal

... Respondents / Plaintiffs

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 29.09.2010 made in A.S.No.57 of 2008 on the file of the Principal Sub Court, Villupuram, reversing the judgment and decree dated 11.07.2006 made in O.S.No.916 of 1987 on the file of the Principal District Munsif Court, Thirukovilur.



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For Appellants : Mr.Sriram for
Mr.R.Devaraj

For Respondents : Mr.P.Dinesh Kumar for R1 to R5

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 29.09.2010 made in A.S.No.57 of 2008 on the file of the Principal Sub Court, Villupuram, reversing the judgment and decree dated 11.07.2006 made in O.S.No.916 of 1987 on the file of the Principal District Munsif Court, Thirukovilur.

2. Heard Mr.Sriram, learned counsel for the appellants, Mr.P.Dinesh Kumar, learned counsel for the respondents and perused the materials available on record.

3. The appellants are the defendants. The Second Appeal has been preferred against the respondents / plaintiffs who have filed the original suit for seeking the relief of declaration and recovery of possession. The Trial Court has dismissed the suit and on the first appeal preferred by the plaintiffs, the First Appellate Court has reversed the judgment of the Trial Court and decreed the suit as prayed.



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4. The brief facts of the plaint runs as under:

The suit properties and other properties belonged to the plaintiffs and other two brothers viz., Periyasamy Goundar and Gurusamy Goundar are their ancestors' joint family properties. Periyasamy Goundar, Gurusamy Goundar and the first plaintiff by name Ramalingam Goundar have been in enjoyment of the same. They have entered into the oral partition prior to the year 1966 and in which, 'C' schedule properties have been allotted to the plaintiffs. In the partition deed dated 09.12.1966, the properties allotted in 'C' schedule has been shown and the same is marked as Ex.A1.

4.1. Subsequent to the partition, the first plaintiff was in enjoyment of his share without any objection whatsoever from the defendants for more than 30 years. In view of his long enjoyment, he has also perfected his title through prescription. The first plaintiff and his son, the second plaintiff have executed a sale deed in favour of the second defendant on 11.02.1985 in respect of 51 cents in S.No.136/1 and 33 cents in S.No.138/2, which has been marked as Ex.A2. Those properties are situated on the south side of the suit property and are not connected to suit items. However, in due course,



the second defendant have destroyed the boundary bund in between the properties of the plaintiffs and the second defendant and encroached the same on and from 09.08.1987.

4.2. During the pendency of the suit, the first plaintiff died and hence, his son, daughter and wife have been impleaded as plaintiffs 2 to 6. The plaintiffs have sought the relief of declaration and recovery of possession. The land comprising 40 cents on the western side along with the land situated in S.No.135 /8 in Nallapalayam have been wrongly included in the patta given to one Krishnamurthy and the first defendant. Taking advantage of the same, the defendants encroached the suit properties.

5. The averments pleaded in the written statement are as follows:

The 40 cents on the western side of the suit property alone is eligible for cultivation and the suit property which is on eastern side in S.No.135/7 is unfit for cultivation and the suit property has been purchased by the first defendant from the first plaintiff's brother Gurusamy Goundar through a sale deed dated 10.04.1970 which is marked as Ex.A3. The first defendant has purchased the suit property through an oral purchase in the year 1970 and



were in enjoyment of the same. The suit is barred by limitation. In fact, in the patta, the third party by name Krishnamurthy has been added by mistake. The first defendant has given an application to the Tahsildar, to correct the same. So there is no cause of action for the suit and hence, the suit should be dismissed.

6. During the course of the trial, on the side of the plaintiffs, two witnesses have been examined as P.W.1 and P.W.2 and Exhibits A1 to A9 have been marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exhibits B1 and B2 were marked. Ex.X1 has been marked through D.W.3 who is the Village Administrative Officer.

7. At the conclusion of the trial, on considering the materials available on record, the Trial Court has dismissed the suit. On the appeal preferred by the plaintiffs, the First Appellate Court has reversed the judgment of the Trial Court and decreed the suit as prayed. Challenging the same, the defendants have preferred this Second Appeal by raising the following substantial questions of law:



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"1. Whether the lower Appellate Court is right in not appreciating the evidence and any documents properly while reverting the judgment of the Trial Court?

2. Whether the Lower Appellate Court is right in not appreciating Ex.A2 contrary to the admission of the respondents?

3. Whether the finding of the possession by the respondents / appellants by prescription is proved by necessary documents?

4. Whether that finding oral sale against the appellants is supported by any evidence?

5. Any other substantial questions of law that may arise at the time of admission of the Second Appeal?"

8. The learned counsel for the appellants / defendants submitted that even in the sale deed dated 11.02.1985, which has been marked as Ex.A2, the northern boundary has been shown as first defendant's land and not the first plaintiff's land. The First Appellate Court had omitted to appreciate the above fact and rendered a finding that the plaintiffs 1 and 2 by their own conduct while executing the sale deed dated 11.02.1985 has prescribed in the property details that the first defendant's property is lying on the northern side of the property purchased through the sale deed and hence, the



first defendant is the owner of the said property. Even in the boundary details given in the suit schedule also, the owner for the western side land has been shown as the first defendant and the owner of the lands in the south side has been shown as the second defendant Ganesan. So, the learned counsel for the defendants / appellants claim that the essential fact is omitted to be considered by the First Appellate Court and hence, the judgment of the Trial Court dismissing the suit has to be restored.

9. The learned counsel for the plaintiffs / respondents submitted that in the oral evidence given by the first defendant (D.W.1), he has stated that the suit property has been purchased by him for a sale consideration of Rs.50/- per cent and in that case, the sale consideration would workout to Rs.3,850/- for 77 cents. Since the sale consideration has exceeded Rs.100/- it ought to have been registered and the said fact would falsify the first defendant's claim that he had purchased the suit property through oral purchase; it is impractical for the defendants to plead that they have purchased the suit property through oral purchase because the western side 40 cents have been purchased by the first defendant on 10.04.1970 through a registered sale deed. When the suit property was also said to have been



purchased more or less during the same period, more specifically one month thereafter, and that too, for a larger extent of 77 cents, would not have purchased for a sale consideration below Rs.1000/- and hence, there cannot be any oral purchase without a registered sale deed.

9.1. The joint patta for the suit property is inclusive of the first plaintiff's name until filing of the suit. Had it been a separate property of the first defendant through oral purchase, the patta could not have been jointly standing in the name of the first plaintiff also. The Trial Court has made an observation and finding only in accordance with the boundary recitals found in Ex.A2 and that proceeded to dismiss the suit. However, the First Appellate Court has made an holistic appreciation of the material and disbelieved the oral sale and rightly decreed the suit.

10. The fact that the suit property was originally belonged to the first plaintiff was not disputed even by the defendants. While the plaintiffs claim that the title and possession continues to be over the suit property all along until filing of the suit without any interruption, the appellants / defendants have raised a plea stating that by virtue of a oral sale in the year 1970, the



title for the suit property has been passed in their favour. It is right to state that the plaintiffs who have filed the suit should prove their case. The plaintiffs who have got their title deed in their favour have got an easy case to prove by showing that they have been in continuous enjoyment of the suit property without any interruption and that there was no sale much less than oral sale as pleaded by the defendants, especially, the first defendant.

11. Though it is right for the defendants to say that the Ex.A2 sale deed which has been executed in respect of the land on the southern side of the suit property executed in favour of the second defendant has a northern boundary details as "*the property belonged to the first defendant*". That alone cannot be taken as the only proof to deny the title of the plaintiffs because the plaintiffs have got a better probability in terms of the registered sale deed in respect of the suit property and it is the first defendant who claims the title through the oral sale deed. So the fact of oral sale deed has to be proved through the other substantive and corroborative evidence, more particularly, by establishing that the purchaser through oral purchase has been in enjoyment of the property alleged to have been purchased by him from the date of the alleged oral sale.



12. The best document to prove the above fact would be the revenue records that might be standing in the name of the first defendant. Admittedly the first defendant did not produce any revenue records to show that the patta for the suit property had ever stood in his name and that he has been paying the kists for the suit property. On the other hand, the patta for the suit property is continued to be standing in the name of the first plaintiff and they have also able to show that they have been paying the kist receipts.

13. When the Trial Court has just appreciated only one boundary details in the sale deed of the second defendant, the First Appellate Court has made a holistic appreciation of the evidence and had arrived at a conclusion that the first defendant did not prove the oral sale in respect of the suit property. The other argument that was advanced by the plaintiffs / respondents would also convince and support the findings of the First Appellate Court because the second defendant who had purchased 40 cents on the western side of the suit property from the same survey number on 10.04.1970 for a sale consideration of Rs.1000/- had chosen to got a registered sale deed. For a larger extent comprising 77 cents in the suit



property could not have been purchased for any less sale consideration and without the registered sale deed.

14. Even according to the evidence of D.W.1, he has stated that he has purchased the suit property for a valuable consideration of Rs.50/- per cent which would workout the sale consideration for Rs.3850/- and that would also demand a registered sale deed. So, in whatever way the matter is looked, the only inference would be that the defendants did not discharge their burden shifted upon them to prove the oral sale. As the plaintiffs have discharged their initial burden on the strength of the documents and oral evidence produced by them to establish the title over the suit property, the defendants have failed to prove the contrary. Hence, the substantial questions of law are answered against the appellants.

15. In the result, this Second Appeal is dismissed and the judgment and decree dated 29.09.2010 made in A.S.No.57 of 2008 on the file of the Principal Sub Court, Villupuram, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order / Non-speaking order

06.11.2024

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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