



S.A.No.1512 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No.1512 of 2011

Valarmathi

...Appellant / Appellant /
Plaintiff

-Vs-

1.Natesan
2.Ganam

...Respondents / Respondents
Defendants

Prayer:- Second Appeal preferred under Section 100 of CPC, to set aside the judgment and decree made in A.S.No.8 of 2007 dated 28.02.2008 passed by the Additional District Court (FTC No.3) Virudhachalam, confirming the decree and judgment in O.S.No.642 of 1996 dated 03.07.2006 passed by the District Munsif cum Judicial Magistrate Court, Tittakudi.

For Appellant	: Mr.R.Sampathkumar
For R2	: Mr.J.Antony Jesus

J U D G M E N T



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The second appeal is filed by the plaintiff, who lost the case before the Courts below.

2. For the sake of convenience, the parties are referred as plaintiff and defendants as referred in the suit.

3. The case of the plaintiff is as follows:

3.1 The suit was filed by the plaintiff for declaration and for permanent injunction. The land in S.No.233/1B6 originally belongs to Chinnasamy, who was in enjoyment of the suit property. After the demise of Chinnasamy, his wife (Anjalai) and daughter, viz., Kalarani were in occupation and enjoyment of the suit property. The plaintiff has purchased the above property from the said Kalarani by way of a sale deed dated 31.01.1990 for a sale consideration of Rs.5,250/-.

3.2 From the date of the above sale deed, the plaintiff was in possession and enjoyment of the same by constructing a small hut. The defendants had pressurized the plaintiff to sell the suit property in favour of the defendants, which was refused by the plaintiff. The plaintiff contended that the defendants had caused hindrance to the peaceful possession of the



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plaintiff's property from 05.12.1993. Hence, the suit was filed.

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4. The suit was resisted by the defendants by filing a written statement denying the averments made in the plaint. The case of the defendants is that the second defendant has purchased the suit property from Kalarani by way of a registered sale deed dated 27.09.1989 and the said Kalarani was deaf and dumb. From the date of the above sale deed, the defendants were in possession and enjoyment of the property. The defendants contended that they are in actual possession of the suit schedule property in S.No.233/1B6.

5. The defendants in their written statement had specifically contended that the property is situated only in old S.No.233/1B6 and not in re-survey No.247. In the sale deed executed in favour of the second defendant, the survey number was mentioned as S.No.247 instead of S.No.233/1B6. In view of the above, the survey number and extent was rectified as 0.7 cents in S.No.233/1B6 as opposed to 0.56, 0.3 cents in S.No.247.



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6. The Trial Court framed the following issues for determination:

- a) Whether the plaintiff is entitled to the relief as prayed for?
- b) Any other relief?

The Trial Court framed the following additional issues:

- c) Whether the survey number of the suit property is wrong?
- d) Whether the plaintiff is bound by the old rectification deed dated 23.08.1999?

7. Before the Trial Court, P.W-1 to P.W-6 were examined and Exs.A-1 to A-12 were marked on the side of the plaintiff. D.W-1 to D.W-5 were marked on the side of the defendants and Exs.B-1 to B-18 were marked.

8. The Trial Court found that the sale deed in favour of the second defendant was executed on 27.09.1989 whereas the sale deed in favour of the plaintiff was executed on 31.01.1990. Therefore, the sale deed in Ex.B-4 was executed prior to the sale deed in favour of the plaintiff which is marked as Ex.A-1. That apart, the plaintiff has obtained the rectification deed marked as Ex.A-8 on 18.07.2001. Whereas, the second defendant has obtained the rectification deed marked as Ex.B-18 as early as on



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9. The Trial Court found that the rectification deed in Ex.B-18 is binding on the plaintiff and the plaintiff is not entitled to the reliefs. The Trial Court dismissed the suit with cost.

10. Challenging the same, the plaintiff has filed the appeal before the Additional District Court (FTC No.3), Virudhachalam in A.S.No.8 of 2007. The points for determination before the First Appellate Court were whether the appeal is maintainable and whether the judgment and decree of the Trial Court deserves to be confirmed?

11. Before the First Appellate Court, the appellant/plaintiff has contended that the Trial Court has not framed any issue on genuineness of the Will produced by the defendant. On that ground, the appellant/plaintiff requested the First Appellate Court to remand back the matter to the Trial Court.

12. The First Appellate Court found that there is no necessity to frame



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any issue on genuineness of the Will as the said Will is not the basis of the findings given by the Trial Court. The First Appellate Court noted that Ex.B-4 sale deed in favour of the second defendant was executed prior to the execution of Ex.A-1 sale deed in favour of the plaintiff.

13. The First Appellate Court found that the signature of the vendor, Kalarani in Ex.A-1, sale deed and Ex.A-8, rectification deed differs. That apart, the vendor Kalarani has affixed her fingerprint in Ex.B-4 sale deed and Ex.B-18 executed in favour of the second defendant. However, signature with the name Kalarani is found in each page of Ex.A-1 sale deed and Ex.A-8 rectification deed.

14. The First Appellate Court noted that in the deposition of Kalarani as P.W-6, she has affixed her fingerprint and not the signature. The First Appellate Court doubted the signature in Ex.A-1 and Ex.A-8 as the said Kalarani's fingerprint was accepted by the Trial Court in the deposition for the reason that the said Kalarani does not know to write her name.

15. The First Appellate Court found that the possession of the suit



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property is with the second defendant as the name of the second defendant is found in Ex.A-12 adangal marked by the plaintiff. Therefore, the plaintiff failed to prove her possession. The First Appellate Court disbelieved Exs.A-1 and Ex.A-8 in favour of the appellant/plaintiff and dismissed the appeal with cost. Challenging the same, the present second appeal is filed.

16. This Court, at the stage of admission, has only issued notice to the respondent and has not admitted the second appeal on any substantial questions of law. Therefore, this Court has proceeded to decide the matter on merits.

17. Learned counsel for the appellant submitted that the appellant has proved the title and possession over the suit property vide Exs.A-1, Ex.A-8 and other documents produced before the Trial Court. The learned counsel submitted that the Courts below failed to appreciate Ex.A-1 and Ex.A-8 and the evidence of P.W-2.

18. Learned counsel for the second respondent submitted that as held



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by the Courts below, the plaintiff/appellant has not proved her title and possession over the suit property. Therefore, the appellant is not entitled for the reliefs.

19. On examination of evidence and documents produced on either side, it is clear that the appellant has not disputed the execution of Ex.B-4 sale deed and Ex.B-18 rectification deed in favour of the second defendant. The Courts below are right in disbelieving the sale deed and rectification deed executed in favour of the appellant for the reason that the sale deed in favour of the second defendant was executed prior to the execution of sale deed in favour of the appellant. That apart, the fact that the said Kalarani has only affixed her fingerprint in Ex.B-18 executed subsequent to Ex.A-1, while her signature is found in Ex.A-1 executed in favour of the appellant/plaintiff creates serious doubt about the genuineness of Ex.A-1 sale deed which is relied upon by the appellant/plaintiff to claim right and title over the suit property.

20. The appellant/plaintiff has not clarified the above aspect before



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the Courts below. Therefore, the Courts below are right in holding that the appellant/plaintiff has failed to prove her title and possession over the suit property. In view of the same, the judgment and decree passed by the Courts below need not be interfered with.

21. In the result, the second appeal is dismissed. The judgment and decree in A.S.No.8 of 2007 dated 28.02.2008 passed by the Additional District Court (FTC No.3), Virudhachalam is confirmed. No costs.

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cda

Index : Yes/No

Speaking/Non Speaking order



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N.SENTHILKUMAR, J.

cda

To

- 1.The Additional District Court (FTC No.3) Virudhachalam.
- 2.The District Munsif cum Judicial Magistrate Court, Tittakudi.
- 3.The Section Officer, VR Records,
High Court, Chennai.

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