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S.A. No.804 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM :

THE HON'BLE MR. JUSTICE N. SENTHILKUMAR

**S.A. No. 804 of 2011
and M.P. No.1 of 2011**

1. Japan @ Jayaprakash
2. Silagambal ... Appellants/ Appellants/ Defendants

Vs.

1. Venkatachalam (Died) ... Respondent/ Respondent/ Plaintiff
2. Anjala
3. V. Tamilselvan
4. Kalaivani
5. Kalaiselvi ... Respondents

(RR2 to 5 brought on record as LRs of the deceased sole respondent viz., Venkatachalam vide order of Court dated 21.02.2020 made in C.M.P.No.5192 to 4194 of 2017 in S.A.No.804/2011)

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 06.04.2009 made in A.S. No.75 of 2007 on the file of the Additional Subordinate Judge's Court at Tiruvannamalai confirming the judgment and decree dated 30.03.2007 made in O.S. No.75 of 2006 on the file of the Additional District Munsif Court at Tiruvannamalai.

For Appellants : Mr. G. Santhanu



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(for T.L. Thirumalai samy)

For Respondents 2 to 5 : Mr. R. Rajarajan

JUDGMENT

This second appeal has been filed challenging the concurrent findings rendered by the Courts below, decreeing the suit filed by the plaintiff, seeking declaration of the title over the "B" schedule property and to remove the encroachment made by the defendants in the said "B" schedule property and to hand over possession of the same to the plaintiff.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court. The brief facts leading to filing of this appeal are as follows:

2.1 The case of the respondent/ plaintiff is that, originally the land to the extent of 1.64 acres situated in S.No.15/5 of Malayanur Chekkadi Village, Chengam Taluk belongs to one Ramajeya Uddaiyar and he sold 1.50 acres out of the 1.64 acres of the said land to one Kuppusamy Chetty by way of sale deed dated 09.08.1956. Thereafter, the said land of 1.50 acres was handed over by way of oral family arrangement in favour of Chinnan Chetty, the



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brother of said Kuppusamy Chetty in the year 1960. Subsequently, the said Chinnan Chetty had sold the said land along with other lands to one Ganesa Chetty by way of sale deed dated 21.01.1978. Later, the said Ganesa Chetty sold the same to one Raman Chetty by way of sale deed dated 28.12.1978. The plaintiff had purchased the said land to the extent of 1.50 acres from the said Raman Chetty by way of sale deed dated 21.10.1985 and from thereon, the plaintiff has been in peaceful possession and enjoyment of the same. The remaining portion of the land in S.No.15/5 to the extent of 0.14 acres were in possession of the defendants herein, which has been acquired by one Bodan Chetty, who is of the father of the first defendant from the legal heirs of one Ponnappa Uddaiyar, who is the son of the said Ramajeya Uddaiyar by way of a sale deed dated 13.09.1965. It is further stated that pursuant to land ceiling proceedings under the statute, land in S.No.15/5 belonging to the plaintiff was assigned a S.No.15/5(A) and the second defendant has been assigned a S.No.15/5(B), however, instead of 1.50 acres, the land in S.No.15/5(A) has been mentioned wrongly as 1.40 acres and similarly, the land in S.No.15/5(B) has been mentioned wrongly as 0.24 acres instead of 0.14 acres. Based on this, the defendants have encroached 10 cents of land out of 1.50 acres of land, which belongs to the plaintiff, therefore, he has come forward with the suit seeking declaration of title over the "B" schedule property and to remove the



encroachment made by the defendants in the said "B" schedule property and to hand over the possession of the same to the plaintiff.

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2.2 The first defendant filed a written statement, which was adopted by the second defendant, by denying the facts of the plaint and stated that the plaintiff has been in possession of the land only to the extent of 98 cents, out of 1.50 acres in S.No.15/5 and as per sale deed dated 13.09.1965, Bodan Chetty, who is the father of the first defendant had purchased 66 cents of land in S.No.15/5 from the legal heirs of the Ponnappa Uddaiyar. It is also stated that the plaintiff during the process of 'Land Tenure Development Scheme' had obtained patta, including the 42 cents of land out of 66 cents, which has been purchased by the father of the first defendant, therefore, the plaintiff is not entitled to the land in the "B" schedule property and also to the entire extent of land in the "A" schedule property.

2.3 The Trial Court after evaluating the evidence and documents marked on side of the plaintiff/ respondent i.e., P.W.1 to P.W.3 and Exs.A.1 to A.12 and on the side of the appellants/ defendants i.e., D.W.1 and Exs.D.1 to D.4 and after hearing both sides, framed necessary issues and decreed the suit as prayed for.



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2.4 Aggrieved over the decree and judgment, the defendants have filed an appeal before the Additional Subordinate Judge's Court at Tiruvannamalai. The lower Appellate Court after hearing both sides framed necessary points for consideration and considering the evidence adduced on both sides, dismissed the appeal by confirming the decree and judgment of the Trial Court.

3. Aggrieved over the judgment and decree of the lower Appellate Court, the appellants/ defendants have preferred this appeal.

4. The learned counsel appearing for the appellants/ defendants submits that the Courts below failed to appreciate the evidences adduced on the side of the defendants, more particularly, not considered the fact that the appellants are in possession of the "B" schedule property over the statutory ceiling. He also submits that the plaintiff has not adduced any evidence to prove their case that they are in possession of the entire 1.50 acres of land. Therefore, he prays to set aside the judgment and decree of the Courts below.

5. The learned counsel appearing for the respondent/ plaintiff



submits that both Courts below have properly appreciated the evidence placed on record and decreed the suit in favour of the plaintiff, therefore, he prays to confirm the judgment and decree of the Trial and the first Appellate Court.

6. I have considered the submissions made on both sides and perused the entire materials available on record.

7. The Trial Court after considering the submissions and averments in the plaint had framed four issues as follows:

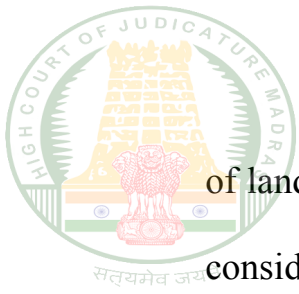
(i). *Whether the predecessors of the plaintiff and the defendant's sale deed is binding on the defendants?*

(ii). *Whether the claim of the defendants that the predecessors of the plaintiff, though they sold 1.50 acres in S.No.15/5 in favour of the plaintiff, only the land to the extent of 0.96 acres alone were in possession of the plaintiff?*

(iii). *Whether the relief claimed by the plaintiff over the B schedule property can be granted?*

(iv). *What are the other relief?*

8. The Trial Court while tracing the transactions over the 1.50 acres



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of land in S.No.15/5 from Ramajeya Uddaiyar to Kuppusamy Chetty, took into consideration, the oral partition between Kuppusamy Chetty to Chinnan Chetty, who inturn sold the same to Ganesa Chetty by way of registered sale deed dated 21.01.1978, subsequently, Ganesa Chetty sold the said land to Raman Chetty by way of sale deed dated 28.12.1978 and the plaintiff purchased the same from Raman Chetty by way of sale deed dated 21.10.1985 and has held that the total extent of land in S.No.15/5 is 1.64 acres and the plaintiff is having right over the 1.50 acres of land and the defendants are entitled only to the extent of remaining 14 cents of land. However, by virtue of sale deed dated 13.09.1965, marked as Ex.A.2, the legal heirs of the Ponnappa Uddaiyar had executed a sale deed in favour of the defendants to the extent of 66 cents.

9. Admittedly Ex.A.1 demarcates the land in S.No.15/5 to the extent of 1.50 acres and the remaining land is only to the extent of 14 cents, whereas the case of the appellants herein by virtue of the sale deed dated 13.09.1965, which is marked as Ex.A.2 is to the extent of 66 cents. Therefore, the appellants contend that appellants are entitled to an extent of land of 66 cents, out of the entire extent of 1.64 acres of land in S.No.15/5. However, the Trial Court on considering the issues 1 and 2 has decided in favour of the respondent



and decreed the suit as prayed for.

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10. Challenging the same, the appellants filed the appeal before the first Appellate Court in A.S.No.75 of 2007 before the learned Additional Subordinate Court, Tiruvannamalai. The first Appellate Court considered Exs.A.1 and A.2 and clearly found that according to Ex.A.1, the suit mentioned property, to the extent of 1.50 acres is in the name of the respondent. Before the first Appellate Court, the appellants specifically contended that the respondent has not marked any revenue records, viz. patta, chitta and adangal and in the absence of any revenue documents filed by the respondent herein before the Trial Court, it is not safe to rely upon, only based on the Ex.A.1 - sale deed, in which 1.50 acres of land stands in the name of the respondent herein. Though the suit was filed for declaration and recovery of possession, the appellant, who specifically contends that he is in enjoyment of the property to an extent of 66 cents by way of Ex.A.2 - sale deed dated 13.09.1965 and also not chosen to file an application before the Trial Court for appointment of an Advocate Commissioner to measure the suit property, so as to ensure, who is in actual possession and who has encroached the suit property.

11. Admittedly, the only issue raised is whether demarcations of land



in Exs.A.1 and A.2 documents, where Ex.A.1 shows that the respondent is entitled to the extent of 1.50 acres of land and as per Ex.A.1, the appellants are entitled to the extent of 66 cents of land. It is pertinent to note that the Ex.A.1 - sale deed document was registered in the year 1956 and Ex.A.2 - sale deed document was registered in the year 1965, much later. It is evident that in Ex.A.2, though it is mentioned as 66 cents of land stands in the name of the appellants, the actual land which was available on the date of registration of Ex.A.2 is only 14 cents. The appellants have not chosen to file an application to appoint an Advocate Commissioner and not produced any evidence to prove that they are in actual possession of 66 cents of land, which is the suit schedule property in Ex.A.2. In the absence of any convincing material evidence to establish that the appellants are in possession of 66 cents of land in the suit schedule property before the Trial Court and the first Appellate Court. Per contra, the Ex.A.1 marked by the respondents is the earliest document, in which it is mentioned as 1.50 acres.

12. The learned counsel appearing for the appellants relied upon a judgment of this Court in *Velayutham and others vs. K.Thangavelu in S.A.No.107 of 2001 dated 29.04.2008*.



"16. Viewing the matter from the aforesaid precedents, it could at once be held that absolutely there is no convincing evience adduced by the plaintiff before the Civil Court so as to enable the Civil Court to come to an independent conclusion. It is a common or garden principle that onus probandi is on the plaintiff to prove his case and he cannot pick holes in the case of the defendants and try to achieve success in the litigative battle. it is also a trite proposition that in a case, the normal principle of evidence is that both the parties refrain from adducing evidence, the plaintiff should be held to have lost his case unless the nature of the case is on a different peculiar exceptional footing with which this Court is not concerned with here. In this case, only P.W.1, the power of attorney of the plaintiff was examined. As has been correctly argued by the learned counsel for the appellants/ defendants that the plaintiff shunned the witness box for the reasons best known to him and no other witnesses have been examined to prove his alleged previous possession. Simply because in Ex.A.1, the order of the Assistant Settlement Officer, there is reference to the evidence of some of the witnesses, the same is not sufficient as those witnesses have not been examined before the Civil Court. the decision of Full Bench of this Court cited supra would mandate that there shall be independent evidence before the Civil Court to prove the rights of the plaintiff. Accordingly, if viewed, it is crystal clear that absolutely there is no evidence to prove that for over 60 years as claimed by the plaintiff, he and his predecessors were in possession of the suit property. No doubt, the first appellate Court in paragraph No.18 criticised that the defendants did not prove their alleged 40 years possession over the suit property. To the risk of repetition without being tautologous, I would like to reiterate that if at all the plaintiff discharged his burden then it would have got shifted to the defendants. But in this case the plaintiff had not proved his case that he and his predecessors in title have been in possession and enjoyment of the suit property for over 60 years. It is just and necessary to analyse the purport of the Tamil Nadu Act No.26 f 1963 and its repercussions on the suit property."

13. In the above cited case, the proposition was only with regard to

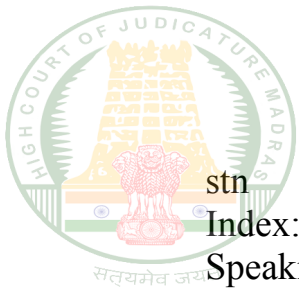


the period of possession of the plaintiff, whereas the present case is different from the judgment cited above. No doubt, as per Ex.A.2, the extent of the land mentioned is 66 cents. The appellants ought to have filed a suit for appropriate relief and it is also pertinent to see that the appellants have not filed any cross objection in the suit before the Trial Court.

14. This Second Appeal was not admitted on any substantial question of law, for this Court to examine the question of law. Only notice was ordered to the respondents and on examination of the facts, this Court has come to the conclusion that there is no substantial question of law, even to be framed by this Court, at this stage. Accordingly, this Second Appeal fails and the concurrent findings rendered by the Courts below are hereby confirmed.

15. In the result, the judgment and decree dated 06.04.2009 in A.S.No.75 of 2007 and the judgment and decree dated 30.03.2007 in O.S.No. 75 of 2006 is confirmed, the Second Appeal is dismissed and the connected miscellaneous petition is closed. No costs.

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To:

1. The Additional Subordinate Judge, Tiruvannamalai.
2. The Additional District Munsif, Tiruvannamalai.
3. The Section Officer,
VR Section,
High Court,
Madras.

N. SENTHILKUMAR, J.

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