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S.A. No. 999 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. 999 of 2011
and M.P. No. 1 of 2011

N.Shankaran

...Appellant

Vs.

A.Valliammal

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 27.08.2010 made in A.S. No. 27 of 2009 on the file of the Subordinate Judge, Gudiyattam, Vellore District, reversing the judgment and decree dated 19.06.2008 made in O.S. No. 151 of 2004 on the file of the District Munsif, Gudiyattam, Vellore District.

For Appellant : Mr.K.A.Ravindran

For Respondent : Mrs.P.Veena Suresh

JUDGMENT

The appellant is the defendant against whom, the plaintiff has filed the suit seeking the relief of declaration and permanent injunction. The trial Court



had dismissed the suit and the first appeal preferred by the plaintiff, the first appellate Court reversed the judgment and decreed the suit. Aggrieved over that, the defendant has preferred the second appeal.

2. The short facts pleaded in the plaint are as under:-

The plaintiff is the owner of the suit property and she is in possession and enjoyment of the same by virtue of her purchase through a registered sale deed dated 07.01.1999. The Patta also stood in the name of the plaintiff. The defendant is the plaintiff's neighbour, who has got no right or title over the suit property. On 11.03.2004 they tried to interfere with the plaintiff's peaceful possession and enjoyment of the suit property by trying to dig a pit to lay a foundation in the suit property and the plaintiff has resisted the same with great difficulties. The suit property is a vacant site. In order to protect the rights of the plaintiff over the suit property, she has filed the suit for declaration and for permanent injunction.

3. The defendant resisted the suit by filing a written-statement and the gist of the written-statement filed by the defendant is as follows:-



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The plaintiff does not have any title over the suit property and the vendors also did not have any transferable title over the suit property and hence, the petitioner cannot have *any right or title over the suit property through the Sale-deed dated 07.01.1999. The sale deed has not been acted upon. Originally, the suit property was a 'Grama Natham Poramboke'. The defendant's ancestor has been in possession and enjoyment of the same. The defendant's grandfather died leaving behind his three sons viz., Nagappa Mandiri, Durrappa Mandiri and Raju Mandiri and they succeeded the suit property. Hence, they are entitled to an undivided share of 1/3rd share each.*

3.1. *Nagappa Mandiri was in possession and enjoyment in a portion of the suit property and he died leaving behind the defendant, Adikesavan, who is the husband of the plaintiff and one Srinivasulu as his legal heirs and they have succeeded 1/3rd each of the 1/3rd share of their father. After the death of the defendant's father, the defendant in possession and enjoyment by putting up a thatched shed and obtained a Hut*



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Electricity Service bearing S.C. No.13, and he was also paying house tax in his name in respect of the door No.54/9, Old Door No.86/9 of the suit property. The plaintiff's husband fully knowing about these facts have created a sale deed in the name of the plaintiff's wife just to harass the defendant. Hence, he prays that the suit should be dismissed.

4. During the course of trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exhibits A1 and A2 were marked and on the side of the defendant, the defendant examined himself as DW1 and Exhibits B1 to B3 were marked.

5. At the conclusion of the trial and after considering the materials available on record, the learned Trial Judge has dismissed the suit and the first appeal preferred by the plaintiff challenging the said judgment was allowed and thereby, the judgment of the lower Court was set aside and the suit got decreed.

6. Now, the defendant has preferred the second appeal by raising the following questions by alleging them to be the substantial questions of law



arising in the appeal:-

- “(a) Whether the suit for declaration and consequential injunction is maintainable when the plaintiff/ respondent herself admits the possession of the appellant?*
- (b) Whether the Lower Appellate Court is right in granting the prayer for declaration of title when admittedly the plaintiff /respondent has purchased 1/3rd share of the property under Ex.A1 and the balance 1/3rd share belonged to the appellant and his brothers?*
- (c) Whether the Appellate Court is right in granting the decree by shifting burden on the appellant to prove his title over the property in his occupation?*
- (d) Whether the respondent /plaintiff has failed to establish her title over the property in possession of the appellant whether the Lower Appellate Court is right in granting the Decree?”*

However, on hearing the arguments of the learned counsel for the appellant, this Court feels to frame the substantial questions of law that can be taken up in this appeal as under:-

- “(a) Whether the appreciation of the First Appellate Court in*



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respect of the Exhibit A1 is in accordance with law?

(b) *Whether the First Appellate Court is right in rendering a positive finding in favour of the plaintiff without considering the materials available on record in a comprehensive manner?"*

7. The learned counsel for the appellant submitted that even during the cross-examination of PW1, who is the plaintiff has admitted that the defendant is in possession of the one portion of the suit property by putting up a thatched sheet and it was not considered by the First Appellate Court. He further stated that the PW1 also admitted the fact that the suit property was originally belonged to his grandfather and after his lifetime the same was inherited by the plaintiff's father and his brothers jointly. The PW1 has admitted in her evidence that she has purchased only 2/3rd share in the suit property and 1/3rd share of Nagappa Mandiri has not been purchased by her. However, she has stated that she has got the share of her husband from the remaining 1/3rd share belonged to Nagappa Mandiri, as he was a son of Nagappa Mandiri. But these facts have not been properly appreciated and the First Appellate Court had chosen to decree the suit in entirety without considering the real merit of sale deed dated 07.01.1999.



8. The learned counsel for the respondent submitted that the First Appellate Court had properly appreciated the evidence and had given credit to the entire material placed by the plaintiff and chosen to decree the suit and it does not warrant any interference.

9. The fact that the suit property was originally belonged to the grandfather of the defendant was not denied. In fact, the plaintiff herself was examined as PW1 in her evidence had admitted that the suit property was originally belonged to Nagappa Mandiri, Durrappa Mandiri and Raju Mandiri, who are sons of Rama Mandiri, who is the defendants' grandfather. Even according to the evidence of PW1, she has purchased only 2/3rd shares belonged to shares of Durrappa Mandiri and Raju Mandiri. This defendant is son of the other sharer by name Nagappa Mandiri. Nagappa Mandiri has got two other sons viz., Adikesavan (the husband of the plaintiff) and Srinivasulu. In fact, the evidence of PW1 is candid about the fact that the remaining 1/3rd share belonged to Nagappa Mandiri. Her claim is only 1/3rd share of 1/3rd, which would be only her husband's share. Since the plaintiff's husband is one of the sons of the Nagappa Mandiri, it is right to claim that all the legal heirs of Nagappa Mandiri are entitled to 1/3 shares in the 1/3rd share of Nagappa



Mandiri.

10. The defendant did not deny the relationship between the plaintiff and his paternal uncle, viz., Adikesavan. In such case, the First Appellate Court should have thought it fit to decree the suit by reversing the judgment of the trial Court only to the extent of $\frac{2}{3}$ share, which the plaintiff purchased through the sale deed and $\frac{1}{3}^{\text{rd}}$ out of $\frac{1}{3}$, which she inherited from her husband. Totally the plaintiff would have got title only in respect of $\frac{2}{3} + \frac{1}{3} \times \frac{1}{3} = \frac{7}{9}$. The remaining $\frac{2}{9}$ would be the share of the defendant and his brother Srinivasulu. However, the defendant did not file any counter claim.

11. Even though the plaintiff has filed the suit for the relief of declaration as found in the plaint filed by the plaintiff, there is no cause of action to create a necessity for seeking the relief of declaration in respect of the suit. All that the plaintiff pleaded was that the plaintiff has been disturbing the possession and hence he thought it fit to file a suit. Even if the First Appellate Court ventured to deal with the title incidentally that ought to have been restricted to $\frac{7}{9}$ share and not exceeding the same. Even though the defendant has filed the written statement by denying the whole of the plaintiff's title, he did not deny the fact that his entitlement to the suit property was only through his father Nagappa Mandiri, who is the owner of just $\frac{1}{3}^{\text{rd}}$ share. The possession of the



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plaintiff's goes with her title as the suit property said to be the vacant site.

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12. As the First Appellate Court has not properly appreciated the binding nature of Exhibit A1 and the materials in a comprehensive manner, this Court feels that the appeal filed by the defendant should be partly allowed in respect of the 2/9th share over which the plaintiff did not establish any title or possession. In view of the same, the appeal is partly allowed and the judgment and decree passed by the First Appellate Court is set aside and modified to the effect of decreeing the plaintiff's suit only in respect of 7/9th share and dismissing the suit in respect of 2/9th share. 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 Subordinate Judge,
Gudiyattam, Vellore District.
2. The District Munsif,
Gudiyattam, Vellore District.
3. The Section Officer,
V.R. Section,



High Court, Madras.

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R.N.MANJULA, J.

Maya

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