



S.A.No.1137 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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1.Santhakumari
2.Ramamoorthy
3.Subbulakshmi
4.Padmavathy
5.Venugopal
6.Munirajulu
7.Neela
8.Kesavalu
9.Rukkumani

...

Appellants

Vs.

1.C.Loganatha Reddy
2.C.Gopal Reddy

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree of the Subordinate Judge, Vellore, dated 12.07.2012, in A.S.No.30 of 2011, reversing the Judgment and Decree of the District Munsif, Katpadi, dated 17.02.2011, in O.S.No.880 of 2009.

For Appellants	: Mr.S.Sathish Rajan
For R1	: Mrs.V.Srimathi
For R2	: No appearance



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JUDGMENT

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Challenge in this second appeal is made to the Judgment and Decree dated 12.07.2012, in A.S.No.30 of 2011, on the file of the Subordinate Court, Vellore, reversing the Judgment and Decree dated 17.02.2011, in O.S.No.880 of 2009, on the file of the District Munsif Court, Katpadi.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The case of the plaintiffs, in brief, is that the suit properties originally belonged to one Karkala Muni Reddy by virtue of the sale deed dated 05.11.1913. The entire extent in S.No.164 is 7.48 acres. Though it is referred to in the sale deed as 7.18 acres, the said Karkala Muni Reddy was in possession of 7.48 acres in S.No.164. The said Karkala Muni Reddy sold 83 cents of land infavour of one Munusamy Reddy by virtue of sale deed dated 12.07.1944. The said Karkala Muni Reddy died intestate in the year of 1955 leaving behind his only son Narayana Reddy to succeed his estate. Therefore, the said Narayana Reddy was in possession and enjoyment of 6.65 acres of land in S.No.164. The said Narayana Reddy sold 0.59 cents in S.No.164 in



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favour of Venkata Reddy under a sale deed dated 23.05.1967. Therefore, Narayana Reddy was in possession of 6.06 acres in the suit survey number.

The said Narayana Reddy died intestate in the year of 1969, leaving behind his widow wife Muniammal and 2 daughters Munilakshmi and Dhanalakshmi, the plaintiffs 1 & 2 as his legal heirs. The plaintiffs 1 & 2 and the said Muniammal effected a division of their joint properties and agreed to enjoy the surplus 30 cents of land in S.No.164 in common.

3.1. After partition, the said Muniammal sold 2.15½ acres in S.No. 164 infavour of one Dr.Vimala Issac by way of a registered sale deed dated 17.07.1972. The 1st plaintiff and Muniammal jointly sold a house and site in S.No.164 in favour of one Thippi Reddy by way of a registered sale deed dated 11.01.1973 and the 2nd plaintiff and Muniammal sold 5 cents of vacant site infavour of one Chengalvaraya reddy, namely, the 1st defendant under a sale deed dated 31.05.1979. The 1st plaintiff had sold a portion of land under two sale deeds dated 11.01.1973 and 26.08.1974 in favour of the said Thippi Reddy. The 2nd plaintiff also sold 1.69 acres of land in favour of the said Dr.Vimala Issac. The total extent sold under the above sale deeds is 7.01 acres and there is 47 cents of land remaining and it belongs to the plaintiffs. The suit



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is in respect of 47 cents only. The plaintiffs and their mother were in possession of the 47 cents in S.No.164, which is the suit property. The 3rd defendant is the husband of the 1st plaintiff. Since the plaintiffs and their mother are women, they had to depend upon the 3rd defendant being the senior male member of the family.

3.2. Suddenly in the year 1990, the 3rd defendant began to assert the title in favour of the 2nd defendant, who is the son of the 1st defendant. The defendants 1 to 3 have no manner of right or title in the suit properties. Therefore, the plaintiffs and their mother issued a legal notice dated 12.02.1991 and the 2nd defendant issued a reply notice dated 11.03.1991. The 3rd defendant also issued a reply notice with false allegations. In the sale deed dated 25.05.1988, it is recited that the 3rd defendant's father orally sold the property. There was no oral sale either in the year 1969 or at any point of time and the 2nd defendant under the guise of the above sale deed is in possession of the 47 cents of the land unauthorizedly and illegally. Therefore, the 2nd defendant is bound to deliver the possession of the same. Hence the suit.

4.The second defendant contested the suit, denied the allegations in the plaint and filed a written statement, contending that the land in S.No.164



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originally belonged to Muni Reddy. The said Muni Reddy sold a portion of land and the share in the Well to the father of one Venkata Reddy. After the death of the said Muni Reddy, his son Narayana Reddy sold a portion of land to the 2nd defendant's grandfather Thippi Reddy and other portion of land to the said Venkata Reddy with a share in the Well in S.No.164. After the death of the said Narayana Reddy, the plaintiffs effected partition of the remaining properties in S.No.164 and other properties under a registered partition deed dated 27.11.1970. The plaintiffs sold their share along with the house to the 2nd defendant's grandfather, namely, Thippi Reddy. Plaintiffs 1 & 2 sold their house and vacant site to the 1st defendant. The plaintiffs also sold other properties to third parties. Therefore, the plaintiffs, the said Naraya Reddy and Muni Reddy have sold the entire land in S.No.164 to various persons. They did not retain any piece of land as alleged in the plaint. There is no surplus land as alleged in the plaint. The said Venkata Reddy's father executed a settlement deed in favour of Venkata Reddy and the said Venkata Reddy sold the property to the 2nd defendant's grandfather Thippi Reddy. The said Venkata Reddy and the 1st defendant have sold a portion of land in S.No.164 and some properties to the defendants under a sale deed dated 25.05.1988. The plaintiffs have no manner of right or interest over the property purchased by the 2nd



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defendant. The revenue records were changed in respect of S.No.164 and long back S.No.164 has been subdivided. The purchasers have been paying the tax.

The 2nd defendant is the absolute owner of the suit properties. The suit is barred by limitation. The 2nd defendant has also purchased a portion of the suit property in S.No. 164 under a sale deed dated 05.04.1990 from one Duraiswamy. There is no cause of action for the suit. Therefore, the 2nd defendant has prayed for dismissing the suit with costs.

4.1.The second defendant filed an additional written statement and contended that the description of the property is false. The extent mentioned in the plaint is an imaginary one. The legal heirs of the plaintiffs have no right or title over the suit properties. The suit properties have not devolved upon the plaintiffs 3 to 11. The plaintiffs 1 & 2 have filed this suit for wrongful gain. Therefore, the 2nd defendant has requested to dismiss the suit with costs.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues and additional issue were framed by the trial Court for consideration:

1. Whether the plaintiffs are entitled to the relief of declaration?

2. Whether the plaintiffs are entitled to the relief



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of possession?

3. Whether the suit is barred by limitation?

4. What relief the plaintiffs are entitled to?

Additional issue:

*Whether the description of the suit property
is correct?*

6.Before the Trial Court, in support of the plaintiffs' case, PW1 was examined and 13 documents were marked as Exs.A.1 to A13. On the side of the defendants, DWs 1 & 2 were examined and 11 documents were marked as Exs.B1 to B11. Exs.X1 to X4 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for.

8.Aggrieved over the same, A.S.No.30 of 2011, on the file of the Subordinate Judge, Vellore, has been filed. The First Appellate Court, after considering the entire materials and evidence on record, allowed the appeal.



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Aggrieved by the same, the present second appeal has been filed.

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9. The second appeal has been admitted on the following substantial questions of law:

a) Whether the 1st appellate court is right in holding that the suit property forms part of the entire extent of 7.16 Ares owned by the plaintiffs family which was already sold by the plaintiffs, without there being any documents or evidence to that effect?

b) Is the sale deed Ex.A10 conveying the suit property by the 1st and 3rd defendant in favour of the 2nd defendant is valid when the executants viz. 1st and 3rd defendants do not derive any title over the suit property?

c) Whether the 1st appellate court is right in calculating the extent sold by the plaintiffs and their family by including the extent in the Well, when the documents produced clearly establish that what was sold was only the land detailed in the schedule to the documents Exs.B1, A2 to A9?



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10.The learned counsel for the appellants submitted that the judgment and decree of the First Appellate Court is against law, weight of evidence and all probabilities of the case and failed to appreciate the facts and circumstances of the case in proper perspective. It had erroneously reversed the well considered judgment of the Trial Court. He further contended that the First Appellate Court failed to note the fact that as per Ex.A1 sale deed, Muni Reddy, who is the plaintiffs' forefather, purchased an extent of 7.16 cents in S.No.164 with a Well. The finding is erroneous and without any evidence. Admittedly, the suit property was not sold by the plaintiffs to Thippi Reddy. The sale made by the 1st defendant in favour of the 2nd defendant is without title. The 2nd defendant, who had purchased the suit property from defendants 1 and 3 have no right and title over the suit property. The 2nd defendant is in possession of the suit property without any valid title. His possession is an illegal one and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

11.The learned counsel for the respondents supported the judgment of the First Appellate Court and further contended that the plaintiffs failed to prove that the plaintiffs and their mother were in possession and enjoyment of



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the 47 cents of land in S.No.164, which is the suit property. The plaintiffs questioned the 3rd defendant's sale deed dated 25.05.1998. In the plaint schedule property, they had mentioned 11 cents in S.No.164/2 and 6 cents in S.No.164/5 out of the total extent 7.16 acres. But failed to prove the title over the property and their possession towards the properties. Therefore, the First Appellate Court had rightly set aside the judgment and decree of the Trial Court and there is no ground to interfere in the findings of the First Appellate Court as it is based upon the evidence. No substantial question of law is involved in this case and thus prayed to dismiss the suit.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On perusal of the records, it is seen that the plaintiffs had filed the suit to declare their title over the plaint schedule properties in S.No.164/2 - 0.11 cents, S.No.164/5 – 0.06 cents, out of total extent of 7.18 acres in old S.No.164 with delivery of possession.



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14. On perusal of the records, the following facts are admittedly not disputed by any of the parties.

(i) Plaint schedule properties belong to original Survey number 164.

(ii) On 05.11.1913, Karkala Muni Reddy purchased the property in S.No.164 to the extent of 7.16 cents from Rukmani ammal, which is evidenced by Ex.A1.

(iii) The abovesaid Karkala Muni Reddy on 12.07.1944 sold 83 cents to one Nandala Munisamy Reddy, it is evidenced by Ex.A2.

(iv) Karkala Muni Reddy died intestate in the year 1955 leaving behind his only son Narayana Reddy to succeed his estate.

(v) The abovesaid Narayana Reddy was in possession and enjoyment of the remaining properties in S.No.164.

(vi) On 23.05.1967, Narayana Reddy sold 59 cents to one Venkata Reddy. It is evidenced by Ex.A3.

(vii) Narayana Reddy died intestate in the year 1969, leaving behind his widow wife and two daughters, namely the plaintiffs 1 & 2 to succeed his estate as his legal heirs. After his death, his legal heirs were in possession and enjoyment of the remaining properties in S.No.164.

(viii) On 27.11.1970, the plaintiffs and their mother effected division of



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their joint properties. After that plaintiffs and their mother dealt with the properties individually and jointly.

(ix)Muniammal sold 2 acres 4 cents and another 2 acres 15 cents to Dr.Vimala Issac on 17.07.1972, which is evidenced by Ex.A4.

(x)Munilakshmi and Muniammal jointly sold 2 cents to Thippi Reddy on 11.01.1973, it is evidenced by A5.

(xi)Muniammal sold 5 cents to Chengalvaraya reddy on 31.05.1979, it is evidenced by Ex.A6.

(xii)Munilakshmi sold 33 cents to Thippi Reddy on 11.01.1973, it is evidenced by Ex.A7.

(xiii)Again Munilakshmi sold 1 acre 35 cents to Thippi Reddy on 01.08.1974, it is evidenced by Ex.A8.

(xiv)Dhanalakshmi sold 1acre 71 cents to Dr.Vimala Issac on 11.06.1972, it is evidenced by Ex.A9 and also sold another 1 acre and 82 ½ cents in different survey number.

(xv)Narayana Reddy sold 7 ½ cents to Thippi Reddy on 23.10.1967, it is evidence by Ex.B1.

The abovesaid facts are not disputed.



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15. On a perusal of the plaint, it is noticed in paragraph No.4 that the plaintiffs claim that the land in S.No.164 is actually to the extent of 7.48, but it was referred as 7.18 in the sale deed and Karkala Muni Reddy was in possession and enjoyment of 7.48 acres in S.No.164 is against the contents in Ex.A1. As per Ex.A1 Karkala Muni Reddy purchased only 7.16 cents of land in S.No.164, This pleading is not supported by any material and evidence.

16. As stated above, in the S.No.164 Karkala Muni Reddy and his legal heirs by way of Exs.A2 to A9 and Ex.B1 sold the properties in S.No.164 to many persons. Further, in paragraph No.10 of the plaint, it is stated that the plaintiffs and their mother was in possession and enjoyment of 47 cents of land in S.No.164, which is the suit property. The plaintiffs questioned the sale deed executed by the 1st and 3rd defendant in favour of the 2nd defendant on 25.05.1988. On 25.05.1988, the defendants 1 and 3 sold the property in S.No.164/2 11 cents, S.No.164/5 6 cents. It is evidenced by the sale deed Ex.A10. On perusal of the same, it is noticed that in the deed, they have mentioned the year as 1969 and the purchase was made by Thippi Reddy. Whether Thippi Reddy purchased any property in S.Nos.164/2 11 cents and 164/5 6 cents, there is no document in this regard. On perusal of the evidence



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DW2 A.Prakasam VAO, Tharapadavodu, it is noticed that S.No.164 originally stands in the name of Sagar Muni Reddy. Thereafter the survey numbers have been sub divided as S.Nos.164/1 and 164/2. Further it is noticed that S.No.164/2 was subdivided as 164/2A and 164/2B. S.No.164/24 stands in the name of R.Balakrishna Reddy. In the said circumstances, on the date of filing of the suit, S.No.164/2 was not there. It was already subdivided into S.Nos.164/2A and 164/2B, which stands in the name of R.Balakrishna Reddy. S.No.164 /5 is also not standing in the name of the plaintiffs.

17. There is no pleading in the plaint to show as to how the plaintiffs are in possession of S.Nos.164/2 - 11 cents and 164/5 – 6 cents and there is no pleading that the suit property in S.No.164 was subdivided. After effecting so many sale, there is no document to show that the plaintiffs having title over the property in subdivided S.Nos.164/2 11 cents and 164/5 6 cents. There is no other supporting evidence and materials to show that the plaintiffs are having title over the plaint schedule property i.e., S.Nos.164/2 and 164/5, no evidence to show their possession and no pleadings for when the defendants



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took possession forcibly from the plaintiffs after the sale deed dated 25.05.1988 in favour of the 2nd defendant.

18.In this case, plaintiffs claiming title over the plaint schedule properties in S.No.164/2 11 cents and 164/5 6 cents, failed to prove their title and possession. The First Appellate Court had rightly held that the plaintiffs failed to prove their title over the plaint schedule properties and dismissed the suit and allowed the appeal by setting aside in the judgment and decree of the Trial Court. The substantial questions of law formulated in this second appeal are accordingly answered.

19.The findings of the First Appellate Court is based upon the evidence on record and there is no irrelevant consideration of any fact and misconceiving of any evidence. Therefore, this case has no merits and it is liable to be dismissed.

20.Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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.07.2024



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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

- 1.The Subordinate Court, Vellore.
- 2.The District Munsif Court, Katpadi.

V.SIVAGNANAM, J.

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**Pre-Delivery Judgment made
in S.A.No.1137 of 2012**

31.07.2024