



S.A.No.1161 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

S.A.No.1161 of 2012 and
M.P.No.1 of 2012

Subramanian

... Appellant

Vs.

Sundaram (Died)
Mahalingam

... Respondent

PRAYER: This Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree of the Additional Sub-ordinate Judges Court at Vriddhachalam in A.S.No.44 of 2011 dated 05.01.2012 concurring with the judgment and decree of the Principal District Munsif Court at Vriddhachalam in O.S.No.145 of 2001 dated 30.10.2010.

For Appellant	: Mr.C.Prabakaran for Mr.V.Anand
For Respondent	: Mr.S.Mayilnathan for Mr.D.Shivakumaran



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ORDER

The unsuccessful plaintiff in the suit is the appellant herein. He filed a suit for declaration of title and injunction. The suit was dismissed by the Trial Court. Aggrieved by the same, he preferred an appeal in A.S.No.44 of 2011 on the file of Additional Sub-Ordinate Judge, Vriddhachalam. The First Appellate Court partly allowed the appeal by granting declaration and injunction in respect of Survey No. 622/16 and affirmed the findings of the Trial Court in respect of Survey No.622/1. Aggrieved by the same, the appellant has come before this Court by way of second appeal.

2. According to the appellant/plaintiff, the suit property is an ancestral property of the plaintiff and after death of his father, he has been in possession and enjoyment of the same for the past 14 years by using it as manure pit. It is averred in the plaint that 2nd defendant committed trespass into the 2nd item of the suit property. Hence, the appellant/plaintiff was constrained to file a suit for declaration of title and injunction.



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3. The 2nd defendant filed a written statement denying the title as well as possession of the appellant/plaintiff over the suit property in R.S.No.622/1, which is shown in the plaint schedule as item 2 of the suit property. In the written statement, the 2nd defendant clearly admitted that he is the owner of the property situated in Survey No.622/1 and also disputed that the appellant is entitled to the property situated in R.S.No.622/16. It is also averred in the written statement that the appellant/plaintiff is claiming right over the property in R.S.No.622/1 without any evidence. On these pleadings, he prayed for dismissal of the suit.

4. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff, who claimed right over the suit property, failed to prove the same and hence, dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.44 of 2011 on the file of Additional Sub-Ordinate Judge, Vridhachalam. The First Appellate Court partly allowed the appeal. Aggrieved by the same, the appellant has preferred the second appeal.



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5. At the time of admission, this Court formulated the following substantial questions of law vide order dated 23.11.2012 and the same reads as follows:-

1) When it is a specific plea of the plaintiff regarding ancestral nature of the suit property comprised in R.S.No.622/16 and R.S.No.622/1, in the light of the specific defence in the written statement that there is no manure pit in R.S.No.622/1, whether the Courts below are correct in law in dismissing the suit against the reports filed by the Advocate Commissioner stating that there is a manure pit comprising of the two survey numbers?

2) Whether the Courts below are correct in law in expecting documentary evidence regarding title deeds for the suit property which is in possession of the family of the plaintiff for many generations?

3) Whether the Courts below are correct in law in deciding the suit without advertting to the pleadings of parties to the suit?

6. The learned counsel for the appellant submitted that the appellant/plaintiff filed the suit for declaration of title and injunction and to hand over possession of item 2 of the plaint schedule property in Survey No.622/1. Though the First Appellate Court accepted the title of the plaintiff over the property in Survey No.622/16 and declared his right over the property and granted injunction as prayed for, dismissed the suit with regard to item 2 of the suit



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property in Survey No.622/1. The First Appellate Court failed to consider the report of the Advocate Commissioner filed in this case. Without considering the relevant evidence, passed the judgment and decree and declined to grant the relief to the appellant/plaintiff with regard to item 2 of the suit schedule property erroneously and hence, pleaded to allow the second appeal.

7. Admittedly, the item 2 of the plaint schedule property is in Survey No.622/1. The plaintiff owns the property in Survey No.622/16 in which the defendant is not claiming any right, but, the plaintiff, without any right, claims ownership over the property in Survey No.622/1. The properties in Survey No.622/1 was owned by the defendant for which patta has been granted in the year 1997 as evident under Ex.B1. The Trial Court rightly observing that there is no oral or documentary evidence to show that the plaintiff is having right over the 2nd item of the property in Survey No.622/1, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal

8. In the plaint plan, the 1st item of the suit schedule property is in Survey No.622/16 and the 2nd item of the suit schedule property is in survey No.622/1.



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The 2nd defendant is not claiming any right over the the 1st item of the property in Survey No.622/16. The 2nd item of the property is in Survey No. 622/1 in which the defendant claims right. The contention of the plaintiff is that Survey No.622/16 includes the 2nd item of the schedule property. The 2nd item of the schedule property is the part of the 1st item of the suit schedule property. To support the contentions of learned counsel for the appellant, no sufficient evidence was let in to prove that the 2nd item of the schedule property is part of 1st item of the suit schedule property. Admittedly, the 2nd item of the schedule property is in Survey No.622/1. Though it is averred in the plaint that the property in Survey No.622/1 belongs to the plaintiff, he failed to produce any document to show that the property in Survey No.622/1 belongs to him. On the other hand, the 2nd defendant has let in evidence to show that the property in Survey No.622/1 was owned by him and patta has also been issued in the year 1997 and the same was marked as Ex.B1.

9. On perusal of the entire records, it is seen that the plaintiff had not let in any evidence to show that the 2nd item of the suit schedule property in Survey No. 622/1 is owned and enjoyed by him. Under these circumstances, the First Appellate Court, based on the evidence under Ex.B1 and oral evidence, found that



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the plaintiff is not having any title over the 2nd item of the suit schedule property and therefore, declined to grant relief with regard to item 2 of the suit schedule property and granted relief with regard to item 1 of the plaint schedule property in Survey No.622/16 and also granted injunction in respect of possession. Both the Courts below, by taking into consideration the evidence available on record, rightly came to the conclusion that the appellant/plaintiff failed to prove the title and hence, I do not find any perversity in the findings rendered by the Courts below.

10. Thus, the second appeal stands dismissed by confirming the judgment and decree of the Additional Sub-ordinate Court at Vriddhachalam in A.S.No.44 of 2011 dated 05.01.2012.

b) In view of the above facts and circumstances of the case, there will be no order as to costs.

c) Consequently, the connected miscellaneous petition is closed.

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Internet : Yes / No

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V.SIVAGNANAM,J.

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To

- 1.The Additional Sub-ordinate Court, Vriddhachalam
2. The Principal District Munsif Court, Vriddhachalam

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