



S.A.No.368 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2024

PRONOUNCED ON : 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.368 of 2012

1.Sadagopal (Died)
2.Damoraran
3.Bagiyalakshmi
4.Gunasekaran
5.Pannerdasan
6.Chandrasekara
7.Easwari

...

Appellants

(A3 to A7 brought on record as LR's of the deceased A1,
vide Court order dated 11.04.2022, made in
CMP Nos.6533, 6534 and 6535 of 2022 in S.A.No.368 of 2012)

Vs.

Maheswari

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 07.07.2011, in A.S.No.139 of 2009, on the file of the Subordinate Court, Tambaram, reversing the Judgment and Decree dated 29.02.2008, in O.S.No.220 of 2006, on the file of the District Munsif Court, Tambaram.



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For Appellant No.2	: No appearance
For Appellant Nos. 3 to 7	: Mr. L.Rajasekar
For Respondent	: Mr.S.Pattabiraman

JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 07.07.2011, in A.S.No.139 of 2009, on the file of the Subordinate Court, Tambaram, reversing the Judgment and Decree dated 29.02.2008, in O.S.No.220 of 2006, on the file of the District Munsif Court, Tambaram.

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

3. The case of the plaintiff, in brief, is that the suit property was originally owned by plaintiff's husband, Logusami @ Logu. He acquired the same through an unregistered settlement deed, dated 26.09.1982, which was executed by his brother, the first defendant. The second defendant is the son of the first defendant. Plaintiff's husband died on 07.02.1993. Thereafter, the defendants tortured the plaintiff and disturbed her enjoyment of the plaint schedule property and they tried to grab the property from the plaintiff. Hence, the plaintiff was constrained to file the suit for permanent injunction against the defendants.

4.The defendants contested the suit and filed a written statement



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contending that the second defendant previously filed a suit in O.S.No.153 of 2006 against the plaintiff in respect of the plaint schedule properties and got the decree of permanent injunction against the plaintiff. Plaintiff suppressed these facts while filing the suit with the help of fabricated documents. The first defendant had no right to execute the settlement deed in respect of the plaint schedule property as he has no right and title over the property and the unregistered settlement deed dated 26.09.1982, executed by the first defendant is invalid. The plaintiff is not in possession and enjoyment of the property. The second defendant is the absolute owner of the plaint schedule property and he is in the possession and enjoyment of the property as on date and thus, pleaded to dismiss the suit.

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

- 1. Whether the plaintiff is proved to be the legal heir of deceased Logussami?***
- 2. Whether the plaintiff has proved her lawful possession to the suit property?***
- 3. Whether the plaintiff is entitled to***



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permanent injunction as prayed?

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6. Before the Trial Court, in support of the plaintiff's case, the plaintiff examined herself as PW1 and 7 documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, the second defendant examined himself as DW1 and 2 documents were marked as Ex.B.1 and Ex.B2. Advocate Commissioner's report and sketch were marked as Ex.C1 and Ex.C2.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court dismissed the suit with costs.

8. Aggrieved over the same, the plaintiff had preferred the First Appeal in A.S.No.139 of 2009, before the Subordinate Judge, Tambaram. The First Appellate Court, after considering the entire materials, allowed the appeal by a judgment and decree dated 07.07.2011, by setting aside the Judgment and Decree of the Trial Court, dated 29.02.2008 and decreed the suit in O.S.No.220 of 2006 with costs. Now, challenging the same, the present Second Appeal has been filed.

9. The second appeal has been admitted on the following substantial



questions of law:

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- 1. Whether the Lower Appellate Court went wrong in disregarding the fact that the plaintiff did not even prove that she is the legal heir of Late.Logusami through whom she was claiming title to the property?***
- 2. Whether the Lower Appellate Court after finding that Ex.A1 to Ex.A7 stands in the name of Logusami, was right in presuming that the plaintiff is in possession and enjoyment of the property even without the plaintiff proving that she is the legal heir of Logusami?***
- 3. Whether the findings of the Lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence that was available on record?***

10.The learned counsel appearing for the appellants submitted that the First Appellate Court erred in overlooking the fact that the plaintiff's husband Logusami got the property from the first defendant (first appellant herein) by way of an unregistered settlement deed. Original settlement deed was not filed. The unregistered settlement deed is an invalid one and no title was passed to



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the plaintiff's husband. Further, the First Appellate Court failed to consider the evidence and the plaintiff admitted that she is residing at her daughter's house and she is not entitled for permanent injunction as she is not in possession of the suit property on the date of filing of the suit. The judgment of the Trial Court in O.S.No.153 of 2006 would operate as resjudicata. The First Appellate Court failed to appreciate the facts and erred in allowing the appeal 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 appearing for the respondent supported the Judgment of the First Appellate Court and pleaded to dismiss the second appeal as it has no merit and there is no substantial question of law involved in this appeal. Only on appreciation of the evidence on fact, the First Appellate Court allowed the appeal and there are no merits in the second appeal and thus pleaded to dismiss the suit.

12.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.



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13.It is seen from the facts that the plaintiff's husband Logusami and the first defendant/first appellant herein are brothers. The second defendant is the son of the first defendant. This fact is not disputed. Further, the plaintiff, during the course of cross examination, had admitted that the plaint schedule property was owned by Deivanai (Sister of her husband Logusami). The said Deivanai died on 18.02.2024. It is not disputed by the both parties.

14.When the plaint schedule property was owned by Deivanai, the first defendant/brother of Deivanai has no right to give the plaint schedule property to the plaintiff's husband by way of an unregistered settlement deed, dated 26.09.1982. Therefore, the title claimed by the plaintiff through her husband Logusami is unsustainable.

15.Further, on perusal of the records and evidence, it is noticed that the documents filed by the plaintiff i.e., Exs.A1 to A7 reflects the facts that the property tax receipts stands transferred in the name of the plaintiff's husband Logusami. Ex.A1 evidences the fact that the Municipal Commissioner, Tambaram, transferred the assessment of the property tax in the name of the plaintiff's husband Logusami by an order dated 12.12.1982 and further, the plaintiff filed Exs.A2, A3, A4 & A5 i.e., water charges receipt, EB white card,



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tax receipt and notice and property tax receipts, respectively, to show her possession. All had evidenced the fact that she is in possession during the time of her husband. Further, the Advocate Commissioner, who inspected the plaint schedule property, filed a report Ex.C1 and Ex.C2 sketch, in which, he noticed that the plaintiff is in enjoyment of the plaint schedule property. In the written statement, the defendants disputed the title of the plaintiff over the plaint schedule property. In such circumstances, the plaintiff has to prove her title though the suit is only for permanent injunction against the defendants. In this regard, as already stated, the plaintiff has no title over the plaint schedule property as the property was owned by Deivanai. On the other hand, though the defendants disputed the title of the plaintiff over the plaint schedule property, they also failed to prove the better title over the plaint schedule property than the plaintiff. The possession over the plaint schedule property is evidenced by the plaintiff vide Exs.A1 to A7, besides the Advocate Commissioner's report and sketch Exs.C1 and C2. This evidenced that the plaintiff is in possession and enjoyment of the plaint schedule property.

16.In this circumstances, being a suit for permanent injunction, in the absence of any better title upon the defendants over the plaint schedule property, the plaintiff is entitled for permanent injunction against the



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defendants. The First Appellate Court had rightly set aside the judgment and decree of the Trial Court and allowed the appeal based on the evidence and records. Therefore, the findings of the First Appellate Court are not perverse or against law and there is no ground for interference.

17. In the light of the abovesaid factors, it is found that the First Appellate Court, on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had rightly allowed the appeal and there is no misappreciation of evidence and irrelevant consideration. There is no ground to hold that the findings are perverse. The substantial question of law formulated in the second appeal is accordingly answered.

18. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

25.06.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No



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V.SIVAGNANAM, J.

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To

- 1.The Subordinate Court, Tambaram.
- 2.The District Munsif Court, Tambaram.

Pre-Delivery Judgment made
in S.A.No.368 of 2012

25.06.2024