



S.A.No.726 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.726 of 2012

1. Vaithilingam

2. Senthilkumar

... Appellants

-Vs-

1. N.Govindarajan Pillai (Died)

2. Savithri

3. Balasubramanian

4. Jayalakhmi

5. Santhi

6. Balakrishnan

... Respondents

[sole respondent died. RR2 to 6 are brought on record as LR's of the deceased sole respondent vide order dated 19.01.2024 made in CMP.No.21367/2021]

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 07.07.2011 in A.S.No.128 of 2008 on the file of the learned Additional Judge, Fast Track Court, Ariyalur, confirming the Judgment and Decree dated 03.02.2004 in O.S.No.100 of 1998 on the file of the learned District Munsif, Jayankondam.



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For Appellants : Mr. S. Govindarajan
For R1 : Died
For R2 to R6 : M/s. J. Selva Princy Ebenezer
For Mr. S. Giritharan

JUDGMENT

The appellants are the defendants in the suit in O.S.No.100 of 1998 on the file of the learned District Munsif, Jayankondam. The respondent is the plaintiff, who initiated the suit for declaration to declare that the lands in Natham Survey No.172 in the extent of 22 x 44 feet of Vellalatheru South, Perambalur District and the same was decreed by the Trial Court and confirmed by the Lower Appellate Court. Against the concurrent findings, this Second Appeal is filed.

2. According to the plaintiff, the suit property belongs to one Saminatha Pillai. He sold the same in favour of the plaintiff's vendor namely Rukmaniammal as per registered Sale deed-Ex.A5, dated 01.01.1966. She in-turn sold the property in favour of the plaintiff by Ex.A1-Sale deed, dated 07.07.1983, thereafter, the plaintiff has taken possession of the property and



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constructed a building, in enjoyment of the same she let it to commercial use. During in the Natham Survey, the Tahshildar has recognized that the plaintiff was in possession of the property and accordingly, Patta was also issued. Since, the defendant disputing the title of the plaintiff, he has come forward with the suit for declaration of title over the land and consequential injunction.

3. The appellants/defendants have contested the suit and claimed that the land was originally belonging to one Saminatha Pillai and after his death, it was inherited by his wife Sellathachi. She had executed a registered Will, dated 14.09.1981 marked as Ex.B1 bequeathing the suit properties in favour of the second defendant. The description of the western boundaries in Ex.A1 is sufficient to show that Saminatha Pillai was having another land and it was in possession of Sellathachi and the same is now in possession of the defendants. The Trial Court has accepted the case of the plaintiffs, declared title in favour of the plaintiffs and granted consequential injunction. The Trial Court has also observed that the defendants have failed to prove the execution of Will and also title in their favour.



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4. Aggrieved over the Judgment and Decree passed by the Trial Court, the defendant has filed A.S.No.128 of 2008, the Lower Appellate Court has not agreed with the defendants and after discussing various facts, confirmed the Judgment of the Trial Court and dismissed the appeal. Aggrieved over the same, this appeal is filed by the defendants.

5. The Second Appeal is admitted on the following substantial questions of law.

“1. Whether the Courts below are correct in finding that the respondent has title to the suit property when his own title deed Ex.A1 and the parent document Ex.A5 clearly state that its western and southern boundaries are property of Swaminatha Pillai especially when the respondent deposes that he had not taken any steps to rectify this alleged mistake?”

2. Whether the Courts below were justified in decreeing the suit when the respondent as P.W.1 admits that he clearly understood four boundaries in Ex.A5 and that he had not measured the land he purchased thereby indicating that the boundary description in Ex.A1 and Ex.A5 are correct?”

6. Mr. S. Govindarajan, learned counsel for the appellants submitted that the description of property in Ex.A1 and Ex.A5 by the plaintiffs



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supports the case of the defendants that there is improper description and also the fact that the plaintiff's vendors having some more lands which has been inherited by the testator of the Will dated 14.09.1987. As per Will, the defendants have taken possession of the suit schedule property and enjoying the same and the plaintiffs have no manner to interfere with the possession and enjoyment of the same. The defendants have also marked various Sale deeds relating to the adjacent lands to show that the plaintiffs land has not been properly described in the Sale deed and since there was no land as stated in Ex.A1 and Ex.A5, plaintiffs claiming right over the defendants land. Both the Courts below have not properly appreciated the recitals in the boundaries mentioned in Ex.B3 and B7. He further submitted that the Will was also properly proved by examining the attesting witness and the same was not properly appreciated by both the Courts.

7. Per Contra, M/s. J. Selva Princy Ebenezer, learned counsel for the respondents submits that it is the case of concurrent finding and both the Courts have accepted the evidences of the plaintiffs to show the fact that the plaintiffs have valid title over the suit property and subsequently, in the



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Natham Survey, the possession of the plaintiffs was also acknowledged by the Revenue Department by issuing of notice as well as consequential Patta.

The evidences placed on record by the defendants only to show that there are certain boundary issues but that alone is not sufficient to show that the plaintiffs are not entitled to claim declaration as prayed for. Both the Courts have rightly held the right of the plaintiffs and the defendants who are not having proper title over the property, cannot deny the right of the plaintiffs.

8. I have considered the submissions made on both sides and also perused the materials placed on record.

9. Admittedly, the defendants have not disputed Ex.A1 which is the Title Deed of the plaintiffs. The recitals in Ex.A1-Title Deed shows that the plaintiffs vendor had purchased the lands in Survey No.172, to the extent of 22' x 44' feet from one Saminathapillai. The Sale deed executed in favour of the plaintiffs was also marked as Ex.A5 and the schedule mentioned property in both the documents have been compared by both the Courts below and held that there is no variation in the schedule of property mentioned in Ex.A1 and A5. It is also recorded by the Trial Court that an



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Advocate Commissioner was appointed to measure the suit property and as per Report and Plan marked as Ex.C1 and Ex.C2 there is no excess land available except 1 feet of land in disputed portion. It is also admitted by the defendant that the plaintiffs is in possession of the said land and he had constructed a building and leased to one 'Amaravathi'.

10. Based on these evidences, the Trial Court has held that the plaintiffs have proved their title to the property. Apart from that, it is also admitted case that during Natham Survey, an enquiry was conducted by the Tahsildar after issuing notices and Patta was also issued in favour of the plaintiffs recognizing his possession of suit properties. Though, it is contended that issuance of Patta had been challenged by the defendants. The fact remains that notices were issued to the plaintiffs since they are in possession and they had succeeded in proving their possession and enquiry before the Tahsildar. Even though, issuance of Patta is not confer any title, the Trial Court has rightly held that based on Ex.A1 and Ex.A5 - Registered Sale deeds and also by comparing Advocate Commissioner's Reports- Ex.C1, the plaintiffs have proved their title.



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11. The defendants relied on the Will executed by one Sellathachi, who is the wife of Saminathapillai. This Will-Ex.B1 was exhibited by examining one of the attesting witness and scribe. However, there is no evidence produced by the defendants regarding the right of the testatrix to execute such a Will. As per Ex.A1, husband of testatrix namely, Saminathan has already executed Sale deed in favour of the plaintiffs vendor, namely Ruckmaniammal. There is no evidence placed on record, Saminathapillai was having some more lands, which was inherited by Sellathachi and the same had been bequeathed in favour of the second defendant herein. The recital in Ex.B1-Will shows that Western boundaries of the lands sold to the plaintiffs vendor recorded as Saminathapillai's land. It is also stated that the Saminathapillai is the husband of the testator. However, there is no evidence placed on record to show, what was the extent of land originally owned by Saminathapillai and after executing Ex.A5 i.e., after selling the portion of the land, what was the remaining land in possession of Saminathapillai. If there is evidence to show the title and extent of land owned by Saminathapillai, it would enable the Courts, to decide whether Sellathachi has inherited any of the property, which was remained unsold by the Saminathapillai or not.



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12. In the absence of any such evidence, both the Courts have rightly accepted the case of the plaintiffs that the right of Sellathachi in executing Ex.B1 has not been established before the Trial Court. Similarly, marking Ex.B3 to Ex.B7 - Certified copies of Sale deeds of adjoining properties, to prove the boundaries is not sufficient to deny the title of the plaintiffs over suit properties. The difference in boundaries contained in various Sale deeds have to be properly explained and it must be proved how this boundaries mentioned could give or create any rights or title in favour of defendants. There is no evidence as stated in the earlier paragraphs that what was the extent of land originally owned by Saminathapillai. The Trial Court has also recorded that it was the practice to mention the names of the persons, who were originally owned by lands as the boundaries but that alone would not confer any right to the persons, whose names have recorded.

13. Both the Courts by way of concurrent findings accepted the case of the plaintiffs and this Court finds that Ex.A1 and Ex.A5 have been properly appreciated and I find there is no misreading of the above documents. Since the plaintiffs have established their case that they purchased the suit properties, which was in possession of their vendors.



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After purchase, they had also constructed buildings and enjoying the same. The defendants denying the title of plaintiffs based on the Will executed by one Sellathachi and the same was also held that same is not binding on the plaintiff since, the testatrix's right to deal with the suit properties has not been established. This Court finds that exhibits A1 to A5 supported by the Ex.C1 and Ex.C2 i.e., Commissioner's Report and Plan supports the case of plaintiffs and there is reason to reject the above evidence. There is no infirmity in the findings of Courts below and substantial question of law is answered accordingly.

14. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 07.07.2011 in A.S.No.128 of 2008 on the file of the learned Additional Judge, Fast Track Court, Ariyalur, confirming the Judgment and Decree dated 03.02.2004 in O.S.No.100 of 1998 on the file of the learned District Munsif, Jayankondam, is hereby confirmed. No order as to 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 Judge,
Fast Track Court, Ariyalur.
 2. The District Munsif,
Jayankondam.
 3. The Section Officer,
VR Section,
High Court of Madras.



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K.RAJASEKAR.,J.

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