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S.A. No. 759 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 759 of 2012

1. Samidurai(died)
2. Tmt.Malarkodi
3. Tmt.Susila
4. Sudha
5. Ramachandran

...Appellants

(Sole appellant died. Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide order of Court dated 30.07.2024 made in C.M.P. No. 29539 to 29541 of 2023 in S.A. No. 759 of 2012)

Vs.

Mrugaiyan

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 18.01.2011 made in A.S. No. 77 of 2008 on the file of the Additional District Judge, Fast Track Court, confirming the judgment and decree dated 09.08.2004 made in O.S. No. 44 of 2002 on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Ms.S.Nathiya For Mr.V.Raghupathi

For Respondent : Mr.A.Murugan



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JUDGMENT

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The plaintiff is the appellant, who has filed a suit for permanent injunction against the defendant in respect of the suit property and got the suit dismissed. The first appeal preferred by the plaintiff is also dismissed by confirming the judgment of the trial court. Now the plaintiff has filed the second appeal by raising the following questions, claiming that they are the substantial questions of law:-

- “(1) Whether the civil court has jurisdiction to disbelieve the Assignment granted by the competent authority when there is no appeal filed before the competent – Forms?
- (2) Whether the Courts below are justified in not considering the settled Law as per which the boundaries to the suit property will prevail over the measurements?
- (3) Whether the Courts below are correct in not considering the Exhibits marked as Exhibits C1 and C2?
- (4) Whether the Courts below have properly appreciated oral evidence of Plaintiff as PW1 and documentary evidence marked as Ex.A1 to A5?



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(5) Whether the Courts below are justified in deciding title of the defendants in a suit filed by the plaintiff only for permanent injunction?”

claiming that they are substantial questions of law involved in the second appeal. The question Nos. 3 and 4 are questions that have to be raised before the first appellate Court and not before the second appellate Court.

2. As regards the first question, it appears that the Assignment dated 20.05.1992 has been marked as Ex.A1. It is right that the trial Court and the first appellate Court have not accepted the Assignment. However, the trial court has assigned the reason stating that the plaintiff has admitted in the plaint and during his evidence that the suit property originally belonged to the defendant's mother viz., Rajammal, but he claimed that the suit property is classified as 'Natham Poramboke' and he has purchased the same through oral sale deed from Rajammal and thereafter, got the Assignment Patta in his name.

3. The learned counsel for the appellant submitted that when Ex.A1 Assignment has not been challenged by the defendant by preferring any



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appeal, the trial Court ought to have accepted the same. The plaintiff appears to have filed a suit on the basis of actual possession and even according to the pleadings of the plaintiff, the defendant's mother, Rajammal had been in possession. Though the plaintiff considers the defendant's mother viz., Rajammal has right in respect of the suit property as ownership. The fact remains that it is a 'Poramboke'. While the party claims title and possession on the basis of Assignment Patta the trial Court cannot close its eye by not examining the actual possession as and when the sale is brought. The trial Court cannot be considered as rejection of the Assignment, which has been not challenged before the appellate authority.

4. The suit is based on possession by claiming a mere decree for permanent injunction. Hence, the first question will not arise as a substantial question of law. The second question is in respect of the boundaries and measurement and that is not the issue even raised before the trial Court. It appears that the appellant /plaintiff has raised the above question in view of the Exhibits B1 and B2 produced by him to claim that he has purchased the property in possession of the defendant's mother Rajammal.



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5. Both the Courts below have rightly observed that the property itself is a poramboke property and the parties who are in possession do not have any right to alienate and question with regard to the measurement and boundaries will not arise. The fifth question is claimed to be a substantial question of law but both the judgments of the Courts below will only show that they had decided the issue as to possession and not about the title of either of the parties. The question No.5 will also not arise for consideration. As the question raised in the second appeal do not serve as a question of law even a substantial question of law, the appeal is dismissed. No costs.

05.11.2024

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

Maya

To

1. The Judge, Additional District Judge,
Fast Track Court, Ariyalur.
2. The Judge, Additional District Munsif Court,
Ariyalur.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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