



S.A.No.51 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.02.2024	Judgment Pronounced on 01.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.51 of 2018

Jayaraman

.. Appellant

Vs.

1.S.Rajendran

2.V.Srinivasan

3.Kaliyaperumal

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 21.04.2017 passed in A.S.No.112 of 2009 on the file of the I Additional Sub-Judge, Villupuram, reversing the judgment and decree dated 12.10.2009 made in O.S.No.109 of 2008 on the file of the II Additional District Munsif Court, Thirukovilur.

For Appellant : Mr.V.Ayyadurai
Senior Counsel for
Mr.V.B.Perumalraj

For Respondents : Mr.C.Munusamy



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 21.04.2017 passed in A.S.No.112 of 2009 on the file of the I Additional Sub-Judge, Villupuram, reversing the judgment and decree dated 12.10.2009 made in O.S.No.109 of 2008 on the file of the II Additional District Munsif Court, Thirukovilur.

2.The 1st plaintiff in a suit for declaration and permanent injunction is the appellant herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The case of the plaintiffs is that the joint family properties were partitioned on 05.10.1995 by way of a registered Partition Deed and 'B' schedule property to the said Partition Deed was allotted to the 2nd plaintiff which was measuring 0.49 cents and 'A' schedule property measuring 0.26



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cents was allotted to the 1st plaintiff. The 2nd plaintiff was also cultivating and enjoying 'C' schedule of the properties, forming part of plaintiffs 'B' schedule property and he was paying Magasul to the 1st plaintiff. 'A' schedule property has been mutated in the names of the 1st and 2nd plaintiffs jointly. The 1st defendant had purchased 0.11 cents in 'C' schedule property along with other properties in and by a sale Deed dated 25.01.2007, without any right. The 1st defendant also obtained patta in respect of 0.03.5 lands comprised in S.No.190/1C and since he was attempting to interfere with the plaintiff's 'B' schedule property, the plaintiff had come forward with the suit.

5.The 2nd defendant resisted the said suit by filing a written statement stating that the suit property comprised in S.No.190/1 measuring 7.71 acres originally belong to one Parasuramapillai, who had executed a Settlement Deed dated 20.06.1957 in favour of his younger son Natarajapillai, who also acted upon the same, by executing a further Settlement Deed on 25.01.2007, thereunder he sold 26 cents together with ½ share in the Well and 2 ½ cents comprising in S.No.190/1. The plaintiffs are sons of one Balakrishnan, who is the father of Parasuramapillai. However, the defendants are in possession and enjoyment of the suit property, having obtained patta and the defendants also stated that the Partition Deed is self serving and the plaintiff has no right



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over the property purchased by the 1st defendant.

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6.The Trial Court decreed the suit. Aggrieved by the dismissal of the suit, the defendants preferred First Appeal along with an application in I.A.No.15 of 2017 under Order XLI Rule 27. On the merits of the appeal filed by the defendants, the First Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the reversal findings rendered by the First Appellate Court, the 1st plaintiff has preferred the above Second Appeal.

7.The Second Appeal was admitted on 01.02.2018, on the following substantial questions of law:

- 1) Whether Ex.B-1-settlement Deed is valid?
- 2) Whether the lower appellate Court was right in reversing the findings of the Trial Court in not considering the purchase of 26 cents on one lot, when the fact remains that separate patta has been issued in respect of disputed 11 cents in patta No.1404 and for 15 cents being sub divided in S.No.190/1B and issued with patta No.1326?



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8.I have heard Mr.V.Ayyadurai, learned Senior Counsel for Mr.V.B.Perumalraj, learned counsel for the appellant and Mr.C.Munusamy, learned counsel for the respondents.

9.Mr.V.Ayyadurai, learned Senior Counsel for the appellant would attack the findings of the First Appellate Court stating that the First Appellate Court has reversed the well considered findings of the Trial Court, without appreciating the oral and documentary evidence available on record. The Trial Court also had rendered a categorical finding with regard to Ex.B1, Settlement Deed, and the First Appellate Court has reversed the said finding without judicious application of mind. He would further state that when the plaintiffs having approached the Court, the burden of proof was always on the plaintiffs and the defendants could not have been called upon to prove their title and the Trial Court, therefore, committed a patent error in shifting the burden on the defendants while decreeing the suit and he would therefore pray for the Second Appeal being allowed.

10.Per contra, Mr.C.Munusamy, learned counsel for the respondents



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would submit that the Settlement Deed was valid and accepted and also acted upon as rightly found by the First Appellate Court. He would also contend that the Trial Court decreed the suit only based on the FMB and the said findings arrived at by the Trial Court are erroneous. He would therefore pray for dismissal of the Second Appeal.

11.I have carefully considered the rival contentions put forth by the learned Senior Counsel for the appellant and the learned counsel for the respondents and I have also independently gone through the entire records namely plaint, written statement, oral and documentary evidence adduced by the parties as well as the additional documents, that have been exhibited by the defendants before the First Appellate Court which have been marked as Ex.B14 to Ex.B27. I have also gone through the Advocate Commissioner's report.

12.Admittedly, the core dispute between the plaintiff and the defendants is only an extent of 11 cents in S.No.190/1C2, which has been set apart as schedule 'D' property. According to the plaintiff, relying upon the Partition Deed, Ex.A1, the said 'D' schedule property belongs to them.



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However, it is the case of the defendants that they have purchased 'D' schedule property by way of a Sale Deed on 25.01.2007 and that their title is traceable from Ex.B1, Settlement Deed dated 20.06.1957, which was executed by the said Parasuramapillai in favour of the Natarajapillai, not only comprising of 98 cents in S.No.190/1 but also other properties. Subsequently, under Ex.B2, Sale Deed dated 25.01.2007, which was executed by said Natarajapillai, Rajaraman and Parasuraman, the 1st defendant purchased 'D' schedule property and has also shown to have mutated revenue records, including the patta in his name. Even though the plaintiffs have chosen to deny the execution of the Settlement Deed, Ex.B1, while being cross-examined, P.W.1 has stated that even though the said Parasuramapillai had executed Settlement Deed on 20.06.1957, the said Settlement Deed did not come into effect. P.W.1 also further stated that his father never objected to the said Settlement Deed in favour of the said Natarajapillai, however, his father never accepted the said Settlement Deed. Thus, it is clear that the plaintiffs admit the execution of the Settlement Deed and it is only their case that the father neither objected nor accepted it. In this circumstance, in my opinion, he could not call upon the defendants to call any one of the attesting witness to the said Ex.B1, Settlement Deed, in order



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to prove its due execution under Section 68 of Indian Evidence Act.

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13.The plaintiffs' case is that 75 cents in S.No.190/1 has come to them by way of a Partition Deed. The entire extent available in S.No.190/1 is a larger area of 1.71 acres and therefore, when the plaintiff themselves restrict the property partitioned to only 75 cents, it again only goes to show that the plaintiffs have admitted Ex.B1, Settlement Deed and only in respect of the remaining properties, the Partition Deed has taken place. Ex.B2, Sale Deed, also evidences the fact that the 1st Defendant has purchased an extent of 26 cents in S.No.190/1, which has been sub-divided as S.No.190/1B and S.No.190/1C, together with share in a Well and Motor Pump set, along with rights in common.

14.Even though the Advocate Commissioner has mentioned that the S.No.190/1 has been sub-divided into S.No.190/1A, S.No.190/1C1 and S.No.190/1B, which is the 'B' schedule property, S.No.190/1C2, which is the 'D' schedule property and 190/1D. These sub-divisions had not been effected at the time of Ex.B1, Settlement Deed and were assigned much later. Therefore, we can only go by the schedule provided in Ex.B1, Settlement



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Deed, which sets out 26 cents in S.No.190/1 with four definite boundaries that has been settled under Ex.B1, Settlement Deed. Similarly, Ex.B2 also relates to 26 cents in S.No.190/1, defined by four definite boundaries. In both Ex.B1 as well as Ex.B2, the entire 26 cents has been mentioned in one item and there is no bifurcation of the said 26 cents as into two lots comprising 15 cents and 11 cents respectively. The 1st defendant has purchased the entire lot of 26 cents, which is clearly defined in Ex.B1 and Ex.B2.

15.The First Appellate Court has reversed the findings of the Trial Court for two primary reasons. Firstly, boundaries in Ex.B1 and Ex.B2 clearly defined 26 cents comprising in S.No.190/1 and that the said 26 cents has been carved out of 1 acre 71 cents, available in S.No.190/1 and further the plaintiffs themselves have admitted that the subject matter of the partition amongst themselves was only for an extent of 75 cents. Secondly, the first Appellate Court has held that Ex.A1, Partition Deed is only a self serving document and the plaintiffs cannot establish their right and title under said Partition Deed.

16.The First Appellate Court has also taken note of the fact that, if 98



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cents, which is the subject matter of Ex.B1, Settlement Deed, is knocked off in the available extent in S.No.190/1, then it will only be 73 cents and not 75 cents as claimed by the plaintiffs. The First Appellate Court has also taken note of the evidence of P.W.2, who has been examined on the side of the plaintiffs and being a close relative of the plaintiffs, who has stated that the defendants have cultivated Paddy crops in the 'D' schedule property. That apart, the First Appellate Court has also considered the plea of adverse possession raised by the plaintiffs themselves and rightly held that the plaintiffs have failed to establish the necessary ingredients, in order to prove adverse possession and that on the contrary, the defendants have, by letting in satisfactory oral and documentary evidence, established the title to 'D' schedule property.

17.The learned Senior Counsel for the appellant would also state that the First Appellate Court, having noticed the contradictions in the Advocate Commissioner's report and the plaint, ought not to have placed reliance on the same, especially, when the objections had been filed by the plaintiffs to the said Advocate Commissioner's report. However, I find that the plaintiffs have not exercised their right to examine the Advocate Commissioner to



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elucidate the contradictions, which according to them, would further their cause in the plaint. Thus, the findings of the First Appellate Court, placing reliance on the report of the Advocate Commissioner, cannot be totally ignored for the mere fact that objections put forth by the plaintiffs to the said Advocate Commissioner's report have not been tested objectively. That apart, I also find that the Trial Court has proceeded to decree the suit only on the basis of the FMB sketch, primarily on placing its findings on the revenue records exhibited by the plaintiffs, without appreciating the weight of the registered documents relied on by the parties to the lis. The substantial questions of law are therefore answered against the appellant.

18.In fine, I do not find any illegality or perversity in the findings arrived at by the First Appellate Court, warranting interference under Section 100 of the Code of Civil Procedure. Accordingly this Second Appeal is dismissed. There shall be no order as to costs.

01.03.2024

Index : Yes/No

Speaking Order/Non-Speaking Order

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P.B.BALAJI., J.

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To

1. The I Additional Sub Judge, Villupuram.
2. The II Additional District Munsif Court, Thirukovilur.
3. The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in

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