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S.A.No.1096 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM:

THE HON'BLE MR. JUSTICE N. SENTHILKUMAR

S.A.No.1096 of 2015
and M.P.No.1 of 2015

1.Jeyaraj

2.Subramani

...Appellants

VS

Dasarathan

...Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 30.10.2015 passed in A.S.No.159 of 2014 on the file of the Subordinate Judge, Arakkonam and confirm the judgment and decree dated 20.06.2014 passed in O.S.No.208 of 2005 on the file of the District Munsif Court, Arakkonam.

For Appellants : Mr.N.Manokaran
for Mr.P.Krishnan

For Respondent : Mr.V.Regunathan

JUDGMENT



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The Second Appeal has been filed by the defendants in the original suit, who succeeded in the Trial Court and lost before the First Appellate Court.

2.The suit was filed for permanent injunction. For the sake of convenience, the parties are referred as plaintiff and defendants as referred in the suit.

3.The case of the plaintiff is that, the suit schedule property originally belonged to one late Chinnapaiyan who was in possession and enjoyment of the property without any disturbance for more than 20 years. The suit property is a Punjai land to a total extent of 3.65 acres. After the death of the said Chinnapaiyan, his legal heirs 1 to 9 had sold the suit schedule property to the plaintiff by virtue of a Sale Deed dated 11.11.2005 registered as Document No.3223 of 2005. The plaintiff contended that, from the date of sale, he is in actual possession and enjoyment of the suit property. On 25.11.2005, there was an interference by the defendants in the peaceful possession and enjoyment of the suit property and therefore, the plaintiff has filed the suit for permanent injunction to refrain the defendants and their men from interfering in the plaintiff's peaceful possession and



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enjoyment of the suit property and to pay the cost of the suit.

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4.The defendants filed their written statement denying the averments made in the plaint. The case of the defendants is that, the suit property originally belonged to one Megavarnam Naidu, who purchased the property under a registered sale deed dated 10.07.1974, from one Munusamy Naidu and others. Ever since the date of purchase, he was in absolute possession and enjoyment of the same till his death. After his demise, his legal heirs were in possession and enjoyment of the same. The defendants purchased the suit schedule property under a registered sale deed dated 07.11.2005, from the legal heirs of the said Megavarnam Naidu. From the date of purchase, the defendants are in possession and enjoyment of the same.

5.The defendants contended that the plaintiff has no title over the suit property and the plaintiff has never been in possession of the suit property. The alleged sale deed dated 11.11.2005 is not true. The defendants contended that, the suit filed by the plaintiff against the defendants for permanent injunction without a prayer for declaration of title is not maintainable in law and on this ground alone, the suit is liable to be dismissed.



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6.The Trial Court while considering the plaint and the written statement filed by the respective parties, had framed the following issues:

(i) Whether the plaintiff is entitled for the relief of permanent injunction refraining the defendants and their men from in any way interfering with the plaintiff's possession of the suit property?

(ii) Any other relief could be granted in favour of the plaintiff?

7.Before the Trial Court, the plaintiff was examined as P.W.1 and one Govindaraj, who is the son of the said Chinnapaiyan was examined as P.W.2. The documents marked on the side of the plaintiff are Exs.A1 & A2 which are Original Patta, Ex. A3 is the Patta issued by the Special Tahsildar, Ex.A4 is the Tax receipts, Ex.A5 is the Surveyor's Notice, Ex.A6 is the certified copy of the Sale Deed dated 11.11.2005, Ex.A7 is the Original Sale Deed dated 11.11.2005, Ex.A8 is the certified copy of Adangal Extract and Ex.A9 is the Computer Patta.

8.On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B1 to B9 were marked. Ex.B1 is the certified copy of Settlement Deed dated 14.12.1957, Ex.B2 is the certified copy of Chitta, Ex.B3 is the Encumbrance Certificate, Ex.B4 is the certified copy of the



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Sale Deed dated 17.08.1967, Ex.B5 is the certified copy of Exchange Deed dated 04.03.1974, Ex.B6 is the certified copy of Sale Deed dated 10.07.1974, Ex.B7 is the certified copy of Sale Deed dated 25.04.1996, Ex.B8 is the original Sale Deed dated 07.11.2005 and Ex.B9 is the original Patta passbook.

9.The Trial Court after evaluating the evidence produced on either side, has come to the conclusion that the plaintiff has not established his right and possession over the suit property as the documents relied upon by the plaintiff to prove his possession over the suit property are joint patta granted by the revenue officials. Separate patta issued in the name of Chinnapaiyan is not produced before the Court. However, the defendants have relied upon Ex. B8 sale deed which was executed by the legal heirs of the said Megavarnam Naidu in favour of the defendants which shows the transfer of interest and right over the property. The Trial Court considered the registered documents filed by the defendants as valid documents which proves transfer of interest and disbelieved the revenue records produced by the plaintiffs. The Trial Court held that the plaintiff has failed to prove his case and the defendants have proved their case by producing oral and documentary evidence. Therefore, the suit was dismissed.



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WEB COPY 10. Challenging the same, the plaintiff has filed an appeal in A.S.No.159 of 2014 before the learned Subordinate Judge, Arakkonam.

11. The First Appellate Court while reversing the judgment passed by the Trial Court had taken 2 points for consideration.

- 1. Whether the Judgment and Decree of the Trial Court is correct?*
- 2. What is the relief to which the appellants are entitled?*

12. The First Appellate Court disbelieved the case of the defendants for the reason that the defendants did not take any steps to annul the Patta which stood in the name of the plaintiff despite knowing the fact that the patta and other Revenue Records stood in the name of the plaintiff and his vendors. This has created a serious doubt regarding the defendants' right over the suit property. The First Appellate Court came to the conclusion that the documents produced by the plaintiff proves that the said Chinnapaiyan, who is the father of the plaintiff's vendors has been in possession and enjoyment of the suit property from the year 1995. Therefore, the plaintiff has obtained the possession and enjoyment of the suit property vide sale deed dated 11.11.2005. The First Appellate Court



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had allowed the appeal and granted the relief of permanent injunction in favour of the plaintiff as prayed for. The judgment and decree passed by the Trial Court was set aside and the suit was decreed in favour of the plaintiff. Challenging the same, the present Second Appeal has been filed.

13. On 29.12.2015, the Second Appeal was admitted on the following Substantial Questions of Law:

(a) Whether the learned lower Appellate Judge erred in reversing the well considered judgment of the Trial Court of categorically holding that the appellants/defendants have proved their better title over the suit property by categorically producing the ancient title deeds under Ex.B1 to B9 and the respondent/plaintiff had not at all produced any documents other than the revenue records?

(b) Whether the lower appellate Judge erred in holding that it was open to the appellants/defendants to initiate appropriate proceedings for declaration of title based upon their title deeds under Ex.B1 to B9 especially when the Trial Court has prima facie held the title in favour of the appellants/defendants based upon the very Ex.B1 to B9?

c) Whether the learned lower Appellate Judge erred in holding that the possession of the suit property in favour of the respondent/plaintiff



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admittedly which was only a vacant lands, he ought to have hold that the possession in favour of the appellants/defendants based upon the well settled proposition of possession follows title?

d) Whether the first Appellate court is correct in law holding that the appellants/defendants failed to prove their title when the suit for permanent injunction filed by the respondent/plaintiff?

14. Mr.N.Manoharan, learned Counsel appearing for the appellants would contend that the First Appellate Court has miserably failed to consider the evidentiary value of Exs.B6, B7 & B8 which traces the title to the suit property. He further submitted that, during the cross examination of P.W.1 and P.W.2, they were not aware of the extent, description, subdivision of the suit property and the details pertaining to the persons in whose name, the Revenue Records stands.

15.The other contention raised by the learned Counsel appearing for the appellants is that, no document such as, a complaint filed before the jurisdictional Police or a legal notice issued to the appellants were produced by the respondent to show that there was actual cause of action on 25.11.2005 to institute the present suit. In the absence of any prudent evidence to show that there was actual interference of possession by the



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defendant in the suit property, the suit cannot be maintained.

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16. The learned counsel for the respondent would contend that the First Appellate Court had rightly disbelieved the case of the appellants that they have obtained the property vide sale deed dated 07.11.2005, while the revenue records are mutated in the name of the respondent herein. As held by the First Appellate Court, failure on the part of the appellants in taking steps to cancel the revenue records pertaining to the suit property which stood in the name of the respondent herein, itself, makes it clear that the appellants do not have any right over the suit property and the appellants are not in possession of the suit property.

17. Heard the arguments advanced by the learned Counsels on either side and perused the materials available on record.

18. On perusal of the judgments passed by the Courts below, it is clear that the respondent has only relied upon the revenue records to prove his ownership and possession as well as the ownership of his vendors over the suit property. Apart from the Patta marked as Ex. A1 to A3 and Ex. A9, tax receipts and adangal extract produced by the respondent, there is no other material to prove the right, possession and enjoyment of the suit



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property in favour of the respondent. Admittedly, in the plaint averments, the respondent has failed to trace the title of the said Chinnapaiyan and his legal heirs. Apart from the sale deed dated 11.11.2005, marked as Ex. A6 and A7, no other documentary evidence is produced by the respondent to establish his right over the suit property.

19. On the other hand, the appellants have produced several registered documents to establish the transfer of right and interest over the suit property in their favour. Mere mention of the respondent's name in the revenue records will not in any way create an inference in favour of the respondent with respect to the ownership and possession of the suit property. The Trial Court is right in holding that the revenue records are only a supporting document and it is not a document of title. The respondent is not entitled to the relief of permanent injunction against the appellants, as the appellants have produced sufficient materials to prove their right and possession over the suit property.

20. In view of the same, all the Substantial Questions of Law are answered in favour of the appellants. The reversal finding given by the First Appellate Court is not in consonance with the evidence available on record and the documents marked on the side of the appellants i.e. Exs.B1



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to B9. Therefore, the Judgment and Decree passed by the First Appellate Court calls for interference by this Court.

21.In the result, the Second Appeal is allowed and the Judgment and Decree in A.S No. 159 of 2014 dated 30.10.2015 passed by the Sub Court, Arakkonam is hereby set aside. The Judgment and Decree in O.S No. 208 of 2005 dated 20.06.2014 passed by the District Munsif Court, Arakkonam is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

Index: Yes
Speaking order: Yes
Neutral Citation: Yes
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To

1. The Subordinate Judge, Arakkonam.
- 2.The District Munsif Court, Arakkonam.



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N.SENTHILKUMAR, J.

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