



Second Appeal No.1002 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1002 of 2013

1.Sivagnanam

2.Sivakumar

.... Appellants

-Vs-

Vela Elaiyammal

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 14.09.2012 made in A.S.No.27 of 2012 on the file of the learned Subordinate Judge, Namakkal reversing the judgment and decree dated 21.02.2012 made in O.S.No.348 of 2008 on the file of the learned Additional District Munsif, Namakkal.

For Appellants : Mr.V.Raghupathy

For Respondent : Mr.V.Gunasekar

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the Subordinate Judge at Namakkal in A.S.No.27 of 2012 dated 14.09.2012 in reversing the judgment and decree of the Court of the Additional



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District Munsif, Namakkal in O.S.No.348 of 2008 dated 21.02.2012 and thereby decreeing the suit for declaration of title and for recovery of possession.

For the sake of convenience, the parties referred to as per their rank in the original suit.

3. O.S.No.348 of 2008 was filed by the respondent before me Tmt.Vela Elaiyammal. Vela Elaiyammal filed the suit for the aforesaid reliefs. It is her claim that the property originally belonged to Eliya Palani @ Konga Gounder, the grandfather of her husband. The said Eliya Palani had sold the property on 23.09.1966 in favour of one Thiruma Gounder. The said Thiruma Gounder had alienated the property in favour of Sembala Ponnammal. Subsequently, the legal heirs of Sembala Ponnammal had alienated the property in favour of the plaintiff on 05.12.2006. The sale deed by Eliya Palani in favour of Thiruma Gounder is Ex.A1, the sale deed in favour of Sembala Ponnammal by Thiruma Gounder is Ex.A2 and the sale deed by the legal heirs of Sembala Ponnammal in favour of the plaintiff is Ex.A3. Subsequent to the purchase, the revenue records were also mutated in favour of the plaintiff under Ex.A4 and she has been paying Kist for the property under Ex.A5.



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4. As against this case of direct title being traced by the plaintiff, it is the case of the defendants that after the death of Eliya Palani, the plaintiff's father-in-law and his brother partitioned the property and half of the share in the property fell to the share of Eliya Kali Gounder, the father-in-law of the plaintiff and the remaining share to the share of the first defendant Sivagnanam. On the death of Eliya Kali Gounder, his sons Eliya Raj, Eliya Thangavel and Eliya Manoharan partitioned the property and the share which fell to Kali Gounder came to the share of Eliya Thangavel. Thereafter, by way of oral exchange, Sivagnanam, the first defendant came into possession of the property. He claims he has been paying the Kist from the year 1990 and therefore the cause of action as pleaded saying the dispossession of the plaintiff in the year 2008 is false.

5. On the basis of these pleadings, the trial Judge framed the following issues:

1. Whether the plaintiff is entitled for the relief of declaration ?
2. Whether the plaintiff is entitled for the relief of possession of suit property?
3. To what other relief the plaintiff is entitled to ?

6. On the side of the plaintiff, the husband of the plaintiff was examined as P.W.1 and one Thiruman as P.W.2. Exs.A1 to A5 were marked on the side of



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the plaintiffs. The first defendant examined himself as D.W.1 and one Ganesan was examined as D.W.2. On his side, the Kist receipts that were paid by him were marked as Ex.B1.

7. The learned trial Judge, on the basis of the oral and documentary evidence let in by the parties, came to the conclusion that the defendants have not proved that the property is ancestral in nature, the partitioning the property had also not been proved and thirdly the plaintiff has proved better title than the defendants. However, she went on to dismiss the suit on the ground that the cause of action as pleaded in the plaint has not been proved and hence the suit is not maintainable.

8. Aggrieved by the same, regular appeal was preferred before the learned Subordinate Judge in Namakkal, who, after detailed analysis, reversed the judgment and decree of the learned trial Judge and decreed the suit as prayed for. Against the said judgment and decree, the present Second Appeal has been presented before this Court.

9. This Court did not admit the Second Appeal, but had ordered notice regarding admission on 21.11.2013. Today, the matter is posted before me for admission and for orders in the appeal.



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10. I heard Mr.V.Raghupathy learned counsel for the appellants and Mr.V.Gunasekaran for the respondent.

11. Mr.V.Raghupathy would vehemently contend that the oral partition between the three sons of Eliya Palani would show that Sivagnanam has become owner of the half share of the property in the year 1990 and subsequently by virtue of the oral exchange with the brother-in-law of the plaintiff, he acquired the remaining half share and therefore he is the absolute owner of the property. According to him, the Kist receipts having been paid from 1990 onwards would show that he is in possession of the property and the allegation that he had forcibly dispossessed the plaintiff from the property in 2008 is a false one. On this ground, he would plead that the Second Appeal be admitted.

12. Mr.V.Gunasekaran would contend that, concurrently the Courts below have found that the plaintiff has better title than the defendants and that the defendants have not proved the oral partition. He would state that insofar as title is concerned, being a concurrent finding, this Court should not re-appreciate the evidence and the appeal should be dismissed.



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13. I have considered the arguments of both sides and have carefully analysed the records.

14. There is no dispute that the property belonged to Eliya Palani @ Konga Gounder. The documents under Ex.A1 to A5 sale deeds by which Eliya Palani @ Konga Gounder had alienated the property in favour of Thiruma Gounder. After alienating the property in favour of Thiruma Gounder, he had in turn sold the property Sembala Ponnammal. Sembala Ponnammal's legal representatives have sold the property in favour of the plaintiff. Insofar as the issue of oral partition is concerned, concurrently the Courts have found that the same has not been proved. Apart from the above fact, I have to take note of the fact that the property has been sold by the Eliya Palani in favour of Thiruma Gounder in the year 1966 and therefore the property was no more available to the family for being partitioned in the year 1990.

15. In other words, when the father-in-law of the plaintiff had sold the property in the year 1966, it is beyond one's imagination that his sons could have partitioned the property in the year 1970. By the time the alleged partition took place in 1970, Eliya Palani was no more the owner and the owner was Thiruma Gounder. The Courts below have rightly traced the title and have found that the title of the property on the date of presentation of the plaintiff vested



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with Tmt.Vela Elaiyammal. As against the title deeds that have been projected by the plaintiff, the defendants had only shown Kist receipts for payment of Government taxes from the year 1990. Revenue records will not confer any title neither municipal taxes give any additional benefit to the defendants.

16. I am unable to comprehend as to how the Kist receipts were issued in the name of the first defendant, when the date on which the receipt was issued, it was neither Eliya Palani nor Thiruma Gounder who was the owner of the property, but Sembala Ponnammal. The trial Court had come to the incorrect conclusion that the plaint should be dismissed when the cause of action paragraph does not tally with that of the defendants. It has been consistently held by Courts that the paragraph disclosing the cause of action is an irrelevant paragraph and in order to understand the cause of action in the plaint, the entire plaint has to be read carefully.

17. My reading of the plaint shows continuous title from Eliya Palani to Thiruma Gounder and thereafter to Sembala Ponnammal and finally to the plaintiff. The defendants have not pleaded adverse possession, but have set up title in themselves by way of oral partition and oral exchange. Both oral partition and oral exchange not having been proved, the plaintiff would consequently be entitled for a decree. The mistake committed by the trial Court in dismissing the



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suit after finding the title in favour of the plaintiff has been rectified by the lower appellate Court. None of the questions of law suggested by Mr.V.Raghupathy arises for consideration in this appeal.

18. In fine, the Second Appeal is dismissed. The judgment and decree of the court of the learned Subordinate Judge, Namakkal dated 14.09.2012 made in A.S.No.27 of 2012 reversing the judgment and decree dated 21.02.2012 made in O.S.No.348 of 2008 on the file of the learned Additional District Munsif, Namakkal stands confirmed. Considering that the parties are close relatives, I am not inclined to impose costs. Consequently, connected miscellaneous petition is closed.

18.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Subordinate Judge, Namakkal.
- 2.The Additional District Munsif, Namakkal.



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V.LAKSHMINARAYANAN, J.

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