



S.A.No.1174 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1174 of 2013

and

M.P.No.1 of 2013

Radhakrishnan

.. Appellant

Vs.

1.Jagathambal

2.Janakiraman

3.Lakshmanan

4.Subramanian

5.Muthu

6.Venu (Died)

.. Respondents

(R6 died and
dismissed as abated
vide order of this
Court, dated
09.11.2017 by DKKJ)



S.A.No.1174 of 2013

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Subordinate Judge, Madurantakam in A.S.No.46 of 2010, dated 30.11.2011 confirming the decree and judgment passed in O.S.No.185 of 2005 on the file of the District Munsif Court, Madurantakam, dated 12.04.2010.

For Appellant : Mr.C.Vigneshwaran for
Mr.K.Govi Ganesan

For R1 : Mr.P.Arumugavel
for Mr.A.Edwin Prabakar

For RR2 to 5 : Mr.Anandakumar
for Mr.T.Thyagarajan

JUDGMENT

The present Second Appeal arises out of the judgment and decree in A.S.No.46 of 2010, dated 30.11.2011 on the file of the learned Subordinate Judge at Madurantakam in confirming the judgment and decree in O.S.No.185 of 2005, dated 12.04.2010 on the file of the District Munsif Court at Madurantakam.

2. O.S.No.185 of 2005 is a suit for bare injunction. The suit had been presented with respect to Survey No.255/4 of Mugaiyur Village, Cheyyur Sub District and Taluk, Kanchipuram District.



S.A.No.1174 of 2013

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3. The case of the plaintiff is that she had purchased a property from one Muthalammal by way of a registered document, dated 07.09.1987. This document was filed as Ex.A1. After having purchased the property, she had put up a superstructure and she had been residing therein. In recognition of her possession, a patta was granted to her in patta No.115. She had been paying kist and had been in enjoyment of the same.

4. The plaintiff would state that her vendor Muthalammal had a sister by name Vanjiyammal, who was the owner of Survey No.255/1 and 255/2 i.e., the adjacent properties. The said Vanjiyammal died without any direct issues and therefore, her Class II legal heirs partitioned the properties among themselves by a partition deed, dated 23.09.1986, which was marked as Ex.A5. The father of defendants 1 to 4, namely, the 5th defendant/Radhakrishnan was a party to the said document. In the said partition deed, which was executed pursuant to the death of Vanjiyammal, this property was not the subject matter of division. She claimed that the defendants were interfering with her possession and therefore, she presented a suit.



S.A.No.1174 of 2013

WEB COPY

5. The 5th defendant filed a written statement which was adopted by the defendants 1 to 4. It is their case that the property does not belong to Muthalammal but the property was owned by Vanjiyammal. According to them, Muthalammal did not have right, title or interest over the same and execution of sale deed by her in favour of Jagathambal does not confer her any right. According to them, they filed a suit in O.S.No.87 of 2000 on the file of the Sub Court at Madurantakam and the present plaintiff had been examined as D.W.2. In the said suit, the Court had declared that Vanjiyammal is the owner of the property and therefore, according to them, the sale made by Muthalammal is not binding on them.

6. Apart from that, they stated that they have let out the property for the purpose of running a school under the name of "K.V.S. English School" and therefore, the plaintiff is not in possession of the same. On these pleadings, they sought for dismissal of the suit.

7. On the basis of these pleadings, the learned Trial Judge framed the following issues :



S.A.No.1174 of 2013

" 1. Whether the plaintiff is in possession and enjoyment of the suit property ?

2. Whether the plaintiff is entitled for a relief of permanent injunction as prayed for ?

3. To what other relief the plaintiff is entitled to ? "

8. On the side of the plaintiff, she examined herself as P.W.1. She marked the sale deed as Ex.A1 and the original patta granted by the Deputy Tahsildar in her favour as Ex.A2. The computerized patta was also filed as Ex.A3. Apart from that, she produced the registration copy of the partition deed between the Class II legal heirs of Vanjiyammal in Court. It is pertinent to point out that the said partition document was marked during the cross examination of D.W.1. The defendant entered into the witness box and marked Ex.B1 to B7.

9. On the basis of these evidences, the defendants had argued that Jagathambal is not in possession of the property. This was rejected by the Trial Court and the suit was decreed.



S.A.No.1174 of 2013

10. Aggrieved by the same, the defendants preferred an appeal in A.S.No.46 of 2010. The learned Appellate Judge confirmed the findings of the trial Court on 30.11.2011.

11. Aggrieved by the same, the present Second Appeal has been filed before this Court. The Second Appeal was not admitted by this Court but notice regarding admission had been ordered on 17.03.2014. Thereafter, the appeal has been listed before me for admission and for orders in the appeal.

12. The learned counsel for the appellant would argue that being the Class II legal heirs, they succeed to the estate of Vanjiyammal and therefore, the plaintiff Jagathambal cannot claim to have purchased the property from Muthalammal. It is their case.

13. He would further plead that in the previous suit, the present plaintiff had deposed as D.W.2 and she had stated that the present defendants as plaintiffs were in possession of the property and therefore, it will operate as an estoppel against her.



S.A.No.1174 of 2013

14. He suggested the following substantial questions of law for consideration :

" 1. Whether the Courts below are right in decreeing the suit for bare injunction without declaration of title ?

2. Whether the Courts below are right while a decree is passed without properly appreciating the oral and the documentary evidence before them ?

3. Whether the evidence given by the plaintiff in earlier suit is not an estoppels against her in the subsequent suit ?

4. Whether the evidence given in the earlier suit is not binding on the deponent in a subsequent suit ?

5. Whether the Courts below are right in dismissing the appeal by the appellant stating they have not produced the legal heir certificate whereas it is an admitted case by the plaintiff that they are the legal heirs in her own plaint ? "

15. Mr.P.Arumugavel for Mr.A.Edwin Prabakar, learned counsel appearing for the 1st respondent would resist the appeal stating that the purchase, that has been made under Ex.A1, has been substantiated by the



S.A.No.1174 of 2013

revenue documents, which have been filed under Ex.A3 and Ex.A4. He would point out that though the defendants had claimed that they are in possession of the property, they have not produced any records to substantiate the case. He would state that being concurrent finding, this Court need not interfere the appeal.

16. I have carefully considered the arguments on the either side.

17. The property is a vacant land. Therefore, a person who has title to the property succeeds to the possession also. This is based on the principle "possession follows title". Therefore, the issue to be decided in this case is, whether the property belonged to Vanjiyammal or to Muthalammal.

18. The basis of the case of the defendants is that they had previously filed a suit in O.S.No.87 of 2000 on the file of the learned Subordinate Judge at Madurantakam which ended in their favour. A careful perusal of the decree, that has been filed with respect to O.S.No.87 of 2000, would show that the property involved in that dispute was in the same village but of the different survey number, namely, Survey No.255/2. But the present



S.A.No.1174 of 2013

suit relates to Survey No.255/4. Therefore, the judgment and decree in those proceeding would not help the defendants in this case.

19. Apart from that, if the property actually belonged to Vanjiyammal, the same would have been reflected in the partition deed that had been entered into between the Class II legal heirs of Vanjiyammal on 23.09.1986. A glance on the said document would show that insofar as Muthalammal is concerned, she was shown to be in possession of the property to the North of Survey No.255/1. It is pertinent to note that Ex.A5 goes into great details of all the properties that were owned by Vanjiyammal but the property which is the subject matter of this suit was conspicuously absent.

20. Now turning to the arguments that the brother's son are Class IV legal heirs and therefore, they would exclude Muthalammal from the array of heirs, I am surprised to hear such a submission. The schedule to the Hindu Succession Act deals with, who are the Class I and Class II legal heirs. Infact, in this particular case, the husband of the plaintiff/Jagathambal was also a party to the partition deed that was entered into to divide



S.A.No.1174 of 2013

amongst the legal heirs of Vanjiyammal. In the said document as pointed out above, this property was not a subject matter of partition.

21. Further more, when the father of the defendants are alive, they cannot claim to be the legal heirs of Vanjiyammal. It is only on the death of the brother and sisters of Vanjiyammal can their children claim to be the sharers. It is admitted that Radhakrishnan/5th defendant is very much alive and he was a party to Ex.A5.

22. This is a suit for mere injunction based on possession. All that the Courts are expected to see is whether the plaintiff has a lawful title to the same and she is in possession of the property. The title to the plaintiff having been transferred by Muthalammal to her under Ex.A1, a registered sale deed, dated 07.09.1987, it is seen that she has also mutated the revenue document in her favour. As against this evidence, which proves that the plaintiff is in possession of the property, the defendants have not let in any evidence to prove that they are in lawful possession.



S.A.No.1174 of 2013

23. The Courts below have properly applied their minds to the facts of this case and they have come to the conclusion that the plaintiff is in possession and therefore, they had decreed the suit and dismissed the appeal.

24. None of the questions of law suggested arise for consideration in the appeal. I am not inclined to admit the Second Appeal. The Second Appeal fails and it is accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.

25. Considering the fact that the parties are close relatives, there shall be no order as to costs.

04.03.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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S.A.No.1174 of 2013

V. LAKSHMINARAYANAN, J.

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To

- 1.The learned Subordinate Judge,
Madurantakam
- 2.The District Munsif Court,
Madurantakam

S.A.No.1174 of 2013
and
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