



S,A.No.1328 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No.1328 of 2013

P.Usha
W/o. Puvaragavamurthy Reddiar,
Mattigai Village,
Ulundurpet Taluk,
Villupuram District.
...Appellant

-Vs-

1.Ramaswamy
S/o.Natesan, Pachaiveli Village,
Mathiyanur Post,
Ulundurpet Taluk, Villupuram District.

2.Elavazhagi,
W/o.Ramaswamy, Pachaiveli Village,
Mathiyanur Post,
Ulundurpet Taluk, Villupuram District.

....Respondents

Prayer:- Second Appeal preferred under 100 of CPC against the judgment and decree dated 13.03.2012 passed in A.S.No.6 of 2009 on the file of Court of Principal Sub Judge, Villupuram, confirming the judgment and decree dated 29.03.2007 passed in O.S.No.141 of 2005 on the file of the Court of II Additional District Munsif, Ulundurpet.

For Appellant	: M/s.A.Swathi for M/s.S.Ramesh Kumar
For Respondents	: No appearance



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J U D G M E N T

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This Second Appeal has been filed against the judgment and decree dated 13.03.2012, passed in A.S.No.6 of 2009 on the file of Court of Principal Subordinate Judge, Villupuram, confirming the judgment and decree dated 29.03.2007 passed in O.S.No.141 of 2005 on the file of the Court of learned II Additional District Munsif, Ulundurpet.

2. For the sake of convenience, the parties are referred as plaintiff and defendant as referred in the original suit.

3.The plaintiff in the original suit who lost before the Courts below has filed the present second appeal. The original suit was filed for declaration of title and permanent injunction. The case of the appellant/plaintiff is that originally the suit schedule property belonged to one Vijayarama Reddiar, S/o. Arunachala Reddiar. The suit schedule property is situated at Survey No.72/4, Mattigai Village, Thirunavalur Sub-district, Cuddalore District with an extent of 2.84 cents of land including cashew and teak wood trees.



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4. The said Vijayaram Reddiar had four sons namely Arunachalam, Rajendran, Lakshmi Narayanan and Venkatesan. The suit schedule property was acquired by the Revenue Divisional Officer, Thirukovilur, by their proceedings No.6/50, 268/68 dated 03.12.1968 for non-payment of loan to the Government by Vijayaram Reddiar. After the acquisition of the land, it was converted as a Government Poromboke land.

5. Thereafter, the land was re-assigned in the name of Vijayarama Reddiar and his legal heirs subsequent to repayment of entire loan amount due to the Government. A joint patta was issued in the name of the legal heirs of Vijayarama Reddiar. The legal heirs of Vijayarama Reddiar had executed a power deed in favour of the plaintiff on 20.01.1999. Thereafter, the plaintiff had executed a power of attorney deed dated 22.11.2004 in favour of her husband and accordingly, he was in possession and enjoyment of the suit properties. The plaintiff contended that as the defendants without any right or title made attempts to encroach into the suit property and hence the plaintiff had filed the original suit for declaration of title and for permanent injunction against the defendants.

6. The defendants had filed the written statement and denied the averments made in the plaint. The case of the defendants is that the first



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defendant had entered into a registered sale deed dated 15.02.1988 with four male legal heirs of Vijayaram Reddiar by which the share in eastern side to an extent of 1.42 cents was sold to the defendants. By way of another sale deed dated 21.03.1988, registered between the first defendant and Babu Reddiar by which the western half share was sold to the first defendant. Based on the above sale deeds, the defendants were in possession and enjoyment of the suit property. Thus, the defendants prayed for dismissal of the suit.

7. The trial Court considered the plaint and written statement and framed the following issues for consideration:

i)Whether the plaintiff is the absolute owner of the suit property or not?

ii)Whether the plaintiff is in absolute possession and enjoyment of the suit property or not?

iii)Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for or not?

iv)Whether the sale deeds dated 15.02.1988 and 21.03.1998 are true and valid or not?

v)Whether the plaintiff is entitled to the relief as prayed for or not?



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vi) To what other relief, the plaintiff is entitled to?

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8. Before the trial Court, P.W.1 to P.W.3 were examined and Ex. A1 to Ex. A16 were marked on the side of the plaintiff. Ex. B1 to B9 were marked and D.W1 and D.W2 were examined on the side of the defendants. Ex. X.1 to X.18 which are revenue records and E.B receipts were marked as third party documents.

9. The trial Court came to the conclusion that the documents relied upon by the plaintiff which are marked as Ex.A6 and A7 are admittedly unregistered documents and it will not confer any valid title in favour of the plaintiff over the suit property. The trial Court held that the plaintiff has not established her exclusive title over the suit property. On the other hand, the defendants have produced the original sale deeds marked as Ex. B1 and Ex. B2. The plaintiff has not taken any steps to cancel the said sale deed. Therefore, the trial Court has dismissed the original suit.

10. Challenging the judgment and decree passed in O.S.No.141 of 2005 on the file of the learned II Additional District Munsif, Ulundurpet, the appellant/plaintiff filed an appeal in A.S.No.6 of 2009 on the file of the Sub Court, Villupuram.

11. The First Appellate Court had taken the following point for



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determination:

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12. The First Appellate Court considered the evidentiary value of deposition of D.W.1 and D.W.2, the officials of electricity department who has deposed that in respect of the suit property, service connection was given in the name of the first defendant pursuant to the application submitted in the year 1994 by the first defendant. The first appellate court noted that the deposition of D.W.1 and D.W.2 shows that the possession of the suit property was not with the plaintiff.

13. The First Appellate Court disbelieved the contention of the plaintiff as the legal heirs of the said Vijayarama Reddiar had not disputed the Ex. B1 and B2 sale deeds executed in favour of the first defendant. The first appellate Court had concurred with the findings of the trial Court and dismissed the appeal. Challenging the Judgment and Decree of the first appellate Court, the present Second Appeal is filed by the appellant/plaintiff.

14. The Second Appeal was admitted by this Court on the following



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substantial questions of law:-

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i) Whether on facts and circumstances the learned Appellate Judge was right in dismissing the suit merely on the alleged ground that Exhibits A6 and A7 are not registered documents is correct in law?

ii) Whether on facts and circumstances, the learned Appellate Judge was right in not recording any findings on the issue no.2 framed by the trial Court is correct in law?

15. The learned Counsel for the appellant/plaintiff would contend that the trial Court and the appellate Court had failed to note that, when the land was already acquired by Government for non-payment of dues by Vijayarama Reddiar, suppressing the same, the sale deed dated 15.02.1988 was executed between the first respondent/first defendant and the legal heirs of the Vijayarama Reddiar. The second contention of the learned counsel for the appellant/plaintiff is that though the suit was originally filed for declaration and permanent injunction, the trial Court and the First Appellate Court has not concentrated the documents marked in favour of the appellant/plaintiff namely the Ex.A8 to Ex.A18, the kist receipts which would show that the appellant is in continuous possession of the suit schedule property.



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16. Considered the submissions of the learned Counsel for the appellant/plaintiff and perused the materials available on record. No representation for the respondents/defendants.

17. As rightly decided by the Courts below, the plaintiff has not produced adequate oral and documentary evidence to prove her title over the suit property. However, the other documentary evidence produced by the appellant/plaintiff would clearly show that the appellant/plaintiff is in continuous possession of suit schedule property. The Courts below have not considered the evidence produced by the appellant/plaintiff to establish her undisturbed possession over the suit property.

18. In the absence of any material produced by the Respondents/Defendants to show that steps were taken either by the Respondents herein or by the legal heirs of the said Vijayarama Reddiar to recover possession from the appellant herein by virtue of the sale deeds executed in favour of the first respondent/first defendant marked as Ex.B.1 and B.2, the courts below are not justified in ignoring the contention of continuous possession of the suit property made by the appellant herein.



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19. That apart, the appellant herein has disputed the sale deeds in favour of the first respondent marked as Ex. B.1 and Ex. B.2 by contending that the vendors of the respondents viz., legal heirs of Vijayarama Reddiar and Babu Reddiar do not have absolute right to execute sale deed in favour of anyone in respect of the suit property as the suit property has been given only as assignment to the legal heirs of Vijayarama Reddiar by the Government. Such a plea cannot be ignored altogether. The Courts below have not examined the validity of Ex. B.1 and Ex. B2 produced by the Respondents herein and the First Appellate Court was not right in failing to render any findings on the issue no.2 framed by the trial Court viz., whether the appellant/plaintiff is in absolute possession and enjoyment of the suit property.

20. With regard to the first substantial question of law, admittedly, Ex-A6, dated 20.01.1999, and Ex-A7, dated 24.08.2001, are unregistered documents and that unregistered agreement can be relied upon only as a collateral purpose and unless and until, there is clinching evidence to believe Ex-A6 and Ex-A7, it cannot be taken into consideration as a primary evidence. The first defendant had clear title by way of Ex-B1 and



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Ex-B2, by way of registered sale deeds in his favour and Ex-B3 to Ex-B7

are kist receipts in the name of the first defendant and Ex-B8 is the electricity service connection. As the law is settled, that, when the plaintiff files a suit for declaration of title, the plaintiff should prove that she has valid title. Admittedly, in the present appeal, the plaintiff did not have any valid document to establish that she is the owner of the suit property. Taking note of the same, the trial Court and the first appellate Court had rejected the plea of the plaintiff and therefore, the first substantial question of law is decided against the appellant.

21.As there is no finding given by the first appellate Court with the regard to the Issue No.2 framed by the trial Court, the second substantial question of law is answered in favour of the appellant and the matter is remanded back to the first appellate Court to render a finding with regard to the Issue No.2 framed by the trial Court in O.S.No.141 of 2005 and the first appellate Court is directed to conclude the appeal proceedings within a period of one year from the date of receipt of a copy of this order.

22. In the result, the **Second Appeal is partly allowed**. No costs.



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Index : Yes/No

Speaking/Non Speaking order

To

- 1.The Principal Sub-Judge, Villupuram.
- 2.II Additional District Munsif, Ulundurpet.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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N.SENTHILKUMAR, J.

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