



S.A.No.765 of 2013

In the High Court of Judicature at Madras

Reserved on : 23.7.2024	Delivered on : 25.7.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Second Appeal No.765 of 2013
& M.P.Nos.1 & 2 of 2013 & 1 of 2014

Smt.Shanthamma

...Appellant

Vs

1.Mr.A.Chandra Reddy
2.Mr.A.Krishna Reddy
3.Mr.A.Raja Reddy
4.Mr.A.Ananda Reddy
5.Mr.Balakrishna Reddy
6.Mr.Nagaraja Reddy

...Respondents

APPEAL under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.11.2012 in A.S.No.15 of 2012 on the file of the Subordinate Court, Hosur confirming the judgment and decree dated 27.1.2012 in O.S.No.321 of 2006 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.P.T.Perumal
For Respondents : Mr.M.Sachin Vijay for
Ms.V.Srimathi

JUDGMENT

The instant second appeal has been filed against the judgment



S.A.No.765 of 2013

and decree dated 26.11.2012 in A.S.No.15 of 2012 on the file of the Subordinate Court, Hosur (First Appellate Court) confirming the judgment and decree dated 27.1.2012 in O.S.No.321 of 2006 on the file of the District Munsif Court, Hosur (Trial Court) dismissing the suit filed by the appellant/plaintiff for the relief of declaration of her right, title and interest over the suit property and for a permanent injunction.

2. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

3. The case of the appellant/plaintiff is as follows :

(i) S.No.152/2 in Echankoor Village, Hosur Taluk and Sub-Registration District, Krishnagiri Registration District comprised of a total extent of 6.52 acres, out of which, the appellant purchased an extent of 2 acres, which was sub-divided into S.No.152/2B, by virtue of a registered sale deed dated 23.10.1970 marked as Ex.A.1. She is in continuous possession and enjoyment of the suit property.

(ii) The grievance of the appellant is that defendants 1 to 4 namely respondents 1 to 4 herein along with their mother - one Mrs.Venkatamma dealt with the remaining extent of 4.4 acres and sold it by virtue of two sale deeds both dated 11.4.1996 marked as Ex.A.4



S.A.No.765 of 2013

and Ex.A.5 respectively to one Mrs.Vinutha Reddy and one Mr.P.S.Ramakrishna Reddy. Therefore, there was no other extent of property available to be dealt with. In the said sale deeds dated 11.4.1996, there was also a specific mention regarding the two acres that was sold in favour of the appellant.

(iii) While so, the said Mrs.Venkatamma executed a power of attorney deed in favour of the fifth defendant/fifth respondent herein to deal with the property comprised of an extent of 2 acres, which was already sold to the plaintiff. Based on this power of attorney document, the fifth defendant executed a sale deed dated 14.12.2005 marked as Ex.B.3 in favour of the sixth defendant/sixth respondent herein. Taking advantage of the said sale deed dated 14.12.2005, defendants 5 and 6 were attempting to interfere with the peaceful possession and enjoyment of the suit property that was in the possession of the plaintiff. It was under those circumstances, the suit came to be filed seeking for the relief of declaration and permanent injunction.

4. The sixth defendant filed a written statement before the Trial Court wherein he took a stand that the property in S.No.152/2 measuring an extent of 6.44 acres did not belong to the vendor of the plaintiff namely one Mr.Pappiah and that therefore, he did not have



S.A.No.765 of 2013

any right or title to sell the suit property in favour of the plaintiff. The further stand taken was to the effect that the plaintiff was never in possession and enjoyment of the suit property.

5. In the written statement, the sixth defendant also took a stand that the property in S.No.152/2 measuring an extent of 6.44 acres originally belonged to one Mr.Chinna Pappaiah and one Mr.Avalappa, who were the sons of one Mr.Chinna Goopalliyappa, that they executed a gift deed dated 04.7.1980 marked as Ex.B.1 in favour of the said Mrs.Venkatamma, who was the mother of defendants 1 to 4, for the entire extent of the property, that subsequently, the revenue records were also transferred in favour of the said Mrs.Venkatamma, that out of 6.44 acres, the said Mrs.Venkatamma and her sons (D1 to D4) sold an extent of one acre in favour of the said Mrs.Vinutha Reddy and an extent of 3.44 acres in favour of the said Mr.P.S.Ramakrishna Reddy, that the remaining extent of 2 acres was dealt with through a registered general power of attorney document marked as Ex.B.2 executed by them in favour of the fifth defendant, that the fifth defendant, in turn, sold an extent of 2 acres in favour of the sixth defendant through a registered sale deed dated 14.12.2005 marked as Ex.B3. In the light of these facts, the sixth defendant completely denied the title of the plaintiff and sought for dismissal of the suit.



S.A.No.765 of 2013

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6. Before the Trial Court, on the side of the plaintiff, two witnesses were examined and Ex.A.1 to Ex.A.5 were marked. On the side of the defendants, six witnesses were examined and Ex.B.1 to Ex.B.9 were marked. Further, two court documents namely the report and the plan of the Advocate Commissioner were marked as Ex.C1 and Ex.C.2. In addition, the revenue records maintained at Hosur Taluk were marked as Ex.X.1 and Ex.X.2.

7. The Trial Court framed issues and on appreciation of the oral and documentary evidence, the Trial Court came to the conclusion that the plaintiff failed to prove that her vendor - the said Mr.Pappiah had a valid and better title to the suit property. The Trial Court also rendered a finding to the effect that the plaintiff was never in possession and enjoyment of the suit property. Accordingly, the relief sight for by the plaintiff was rejected and the suit was ultimately dismissed by the Trial Court by judgment and decree dated 27.1.2012.

8. Aggrieved by the judgment and decree of the Trial Court, the plaintiff filed an appeal before the First Appellate Court. The First Appellate Court formulated points for consideration and came to the conclusion that there was no ground to interfere with the judgment



S.A.No.765 of 2013

and decree of the Trial Court. Accordingly, the appeal filed by the plaintiff was dismissed by judgment and decree dated 26.11.2012 confirming the judgment and decree of the Trial Court dated 27.1.2012. Challenging the same, the plaintiff/appellant is before this Court.

9. The second appeal was admitted on 15.3.2022 on the following substantial question of law :

"Whether both the Courts below failed to appreciate the fact that the sale deeds executed by Venkatamma through Exs.A4 and A5 specifically mentioned about the conveyance of the property in favour of the plaintiff to an extent of 2 acres (6.44 acres - 4.44 acres) and the same can be construed to be an admission of the title of the plaintiff coupled with the sale deed marked as Ex.A.1?"

10. Before this Court, apart from M.P.No.1 of 2013 filed for granting an order of interim injunction, two petitions namely M.P.Nos.2 of 2013 and 1 of 2014 were filed under Order XLI Rule 27 of the Civil Procedure Code to receive additional documents.

11. In M.P.No.2 of 2013, the appellant enclosed copies of certain



S.A.No.765 of 2013

documents, most of which are kist receipts.

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12. Further, in M.P.No.1 of 2014, by enclosing a copy, the appellant wants to rely upon a sale deed dated 03.1.2005 registered as Doc.No.19 of 2005 on the file of the Sub-Registrar, Hosur. This additional evidence is sought to be brought in mainly on the ground that the Advocate Commissioner identified S.No.152/4 as the suit property and he noted it to be a poramboke land. However, this property in S.F.No.152/4 was dealt with under the sale deed dated 03.1.2005. Therefore, in order to dis-prove the findings of the Advocate Commissioner, M.P.No.1 of 2014 has been filed to bring in additional evidence.

13. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also gone through the judgments rendered by both the Courts below.

14. The main ground that was raised by the learned counsel for the appellant is that in the sale deeds marked as Ex.A.4 and Ex.A.5 executed by the said Mrs.Venkatamma and her four sons (D1 to D4) in favour of the said Mrs.Vinutha Reddy and the said Mr.P.S.Ramakrishna Reddy respectively, there was a specific reference to the sale made in



S.A.No.765 of 2013

favour of the appellant/plaintiff through the sale deed dated 23.10.1970 (Ex.A.1) executed by the said Mr.Pappaiah. It was further contended that the said Mrs.Venkatamma and her sons (D1 to D4) admitted the suit property being sold in favour of the appellant and that the said admission must be taken to be a substantive evidence to declare the title of the appellant/plaintiff over the suit property.

15. The appellant/plaintiff alone has come before the Trial Court and sought for the relief of declaration of title and permanent injunction. Therefore, the burden of proof is upon the appellant/plaintiff to first establish her title to the suit property. For this purpose, the appellant/plaintiff is relying upon Ex.A.1 - sale deed dated 23.10.1970 executed in her favour by the said Mr.Pappaiah.

16. On carefully going through Ex.A.1, this Court finds that there is absolutely no indication as to how the said Mr.Pappaiah was claiming right and title over the suit property in S.No.152/2 measuring an extent of 6.52 acres. Out of the total extent of 6.52 acres, what was stated to have been sold to the appellant/plaintiff was an extent of 2 acres.

17. The description of the property in Ex.A.1 is extracted below :



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S.A.No.765 of 2013

"கிரயம் சொத்து விவரம் :

தர்மபுரி ரி.டி., ஓசூர் சப் ரி.டி., ஓசூர் வட்டம்,

ஈச்சாங்கூர் தரப்பு, பசலகிரி கிராமம் சர்வே நெம்பர் 152/2 புஞ்சை விஸ். ஏக்கரில் 6.52க்கு தீர்வை ரூ.8.82 உள்ள நிலத்தில் தங்களுக்கு கிரயம் செய்யும் நிலத்திற்கு செக்குபந்தி வடக்கு - சர்க்கார் ஏரி, தெற்கு - நல்லூர் எல்லை, கிழக்கு - முனியப்பா நிலம், மேற்கு - கூபல்லி ரெட்டி நிலம். இதன் மத்தியில் விஸ். ஏக்கரில் 2.00 தீர்வை ரூ.2.74 உள்ள நிலம் தங்களுக்கு கிரயம் செய்துள்ளேன்."

18. The defendants are denying the very right and title of the said Mr.Pappaiah over the suit property. In the light of this specific denial, it is the bounden duty on the part of the appellant/plaintiff to first establish the title of the said Mr.Pappaiah to the suit property.

19. The Trial Court, while dealing with this issue, rendered a finding to the effect that the appellant/plaintiff had not produced any document to show that her vendor - the said Mr.Pappaiah had a valid title over the suit property.

20. The Trial Court also took into consideration the title documents of the defendants. While undertaking this exercise, the Trial Court considered Ex.B.1 - gift deed executed by the said Mr.Chinna Pappaiah and the said Mr.Avalappa in favour of the said Mrs.Venkatamma, who is none other than the daughter of the said



S.A.No.765 of 2013

Mr.Chinna Pappaiah. Even in this document, there is no reference as to how the said Mr.Chinna Pappaiah and the said Mr.Avalappa were claiming their right and title over the property in S.No.152/2.

21. The Trial Court, in order to satisfy itself, called for the documents from the concerned Department. Accordingly, Ex.X.1 and Ex.X.2 were marked. Ex.X.2 is the old A-Register extract with respect to the property in S.No.152/2 dated 23.8.1972, which would show that the entire extent of property in S.No.152/2 was settled in the names of the said Mr.Chinna Pappaiah and one Mr.Avalu Reddy. This confirmed the title to the property in S.No.152/2. The Trial Court, on applying the test of preponderance of probabilities, gave a categoric finding that the plaintiff failed to establish the title of the said Mr.Pappaiah to the suit property.

22. The Trial Court went into the issue of the so-called admission made in the sale deeds Ex.A.4 and Ex.A.5 regarding the sale of the suit property in favour of the plaintiff. The Trial Court rendered a finding to the effect that a mere mention of the sale made in favour of the plaintiff, by itself, would not constitute an admission and that it could not be taken to be substantive evidence to uphold the title of the plaintiff over the suit property.



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S.A.No.765 of 2013



S.A.No.765 of 2013

23. The Trial Court thereafter had gone into the issue of possession in order to see if the plaintiff was ever in possession of the suit property. An Advocate Commissioner was also appointed to identify the suit property. The Trial Court came to the conclusion that there was absolutely no material to establish the possession of the plaintiff in the suit property. In the light of these findings, the Trial Court dismissed the suit and the judgment of the Trial Court has been confirmed on appeal by the plaintiff before the First Appellate Court by judgment and decree dated 26.11.2012.

24. An admission under Section 17 of the Indian Evidence Act is a statement of fact, which waives or dispenses with the production of evidence, by conceding that the fact asserted by the opponent is true. The admission should be a clear cut, accurate and specific statement of a person and such admission should be in the nature of pinning down a person to the very admission.

25. Admissions are substantive evidence by themselves in view of Sections 17 and 21 of the Indian Evidence Act. The admission is also considered to be a previous statement, which can be used to contradict the maker of such admission during cross examination under Section 145 of the Indian Evidence Act.



S.A.No.765 of 2013

26. The recitals as contained in Ex.A.4 and Ex.A.5 merely recorded the fact that an extent of 2 acres has been purchased by Mrs.Shanthamma (plaintiff) under a sale deed namely doc.No.56 of 1971. This, by itself, does not, in any way, lead to the conclusion that the said Mrs.Venkatamma and her sons (D1 to D4) admitted to the title of the plaintiff and her vendor. As stated supra, in order to use an admission as a substantive evidence, it should be clear and unambiguous. A mere recording that an extent of 2 acres belongs to the plaintiff, by itself, will not lead to an admission made by the said Mrs.Venkatamma and her sons (D1 to D4) as if they admitted the right and title of the plaintiff and her vendor to the suit property. In view of the same, the plaintiff ought to have independently established her title to the suit property and both the Courts below found that Ex.A1 did not anywhere mention as to how the said Mr.Pappaiah was claiming title to the suit property.

27. There is yet another fact, which requires the consideration of this Court. The Advocate Commissioner was appointed by the Trial Court and he prepared the report and the plan. On considering the same, it is seen that the boundaries shown in Ex.A.1 did not tally with the boundaries shown in the suit property. The Advocate Commissioner, in his report and plan, identified (i) S.No.152/3, to



S.A.No.765 of 2013

have been belonging to the husband of the plaintiff and (ii) S.No.152/4 as a Government poramboke land. He had virtually come to the conclusion that the suit property is a poramboke land.

28. Even though the appellant/plaintiff claimed that she was granted patta under the UDR Scheme, she had not produced the same before the Trial Court. Both the Courts below took note of the Advocate Commissioner's report. However, they did not render their ultimate findings based on the said report and the Courts below considered all the relevant documents before coming to a conclusion that the plaintiff had not proved her right and title to the suit property. The report of the Advocate Commissioner cannot be the sole criterion to decide a title suit. The Advocate Commissioner was appointed by the Trial Court in this case only to identify the property. De hors the report of the Advocate Commissioner, the case can be decided based on other materials that are available. Therefore, the petitions filed by the appellant/plaintiff to receive additional evidence will not really help this Court to decide this second appeal.

29. Once it is held that the recitals found in Ex.A4 and Ex.A.5 would not fall within the purview of 'admission', the burden of proof shifts on the plaintiff to prove the right and title of her vendor to the



S.A.No.765 of 2013

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suit property. The plaintiff miserably failed to do so and she virtually rested her case on the stray mentioning made in Ex.A.4 and Ex.A.5 about the sale of the suit property in favour of the plaintiff.

30. One important fact that has to be borne in mind is that for the entire extent of the property in S.No.152/2, the title is traced by the said Mrs.Venkatamma and her sons (D1 to D4) through the gift deed marked as Ex.B1. Out of the total extent of 6.44 acres, an extent of one acre was sold in favour of the said Mrs.Vinutha Reddy and an extent of 3.44 acres was sold in favour of the said Mr.P.S.Ramakrishna Reddy through the sale deeds marked as Ex.A.4 and Ex.A.5 respectively. During these conveyances, the title was traced only from Ex.B.1. After selling an extent of 4.44 acres, the balance of two acres was left and the same was dealt with by the said Mrs.Venkatamma and her sons (D1 to D4) by executing a power of attorney document in favour of the fifth defendant, who, in turn, sold the same to the sixth defendant. While tracing the right and title, the very same document Ex.B.1 was shown as the title document. Thus, the right and title to all the three sale deeds was traced from the gift deed marked as Ex.B.1.



S.A.No.765 of 2013

31. For the foregoing reasons, this Court does not find any illegality or perversity in the findings rendered by both the Courts below. There are no grounds to interfere with the judgments of both the Courts below.

32. Accordingly, the substantial question of law is answered against the appellant/plaintiff. The second appeal is dismissed by confirming the judgments and decrees of both the Courts below. Consequently, the connected miscellaneous petitions are also dismissed. However, considering the facts and circumstances of the case, there will be no order as to costs.

25.7.2024

Speaking Order : Yes

To

- 1.The Subordinate Court, Hosur.
- 2.The District Munsif Court, Hosur.

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S.A.No.765 of 2013

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S.A.No.765 of 2013 &
& M.P.Nos.1 & 2 of 2013
& 1 of 2014

25.7.2024