



S.A.No.924 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.924 of 2013

and

M.P.No.1 of 2013

Velu

.. Appellant

Vs.

1.Kairoon

2.Sarboon

.. Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment passed in A.S.No.91 of 2011, dated 12.04.2013 on the file of the Subordinate Court at Vellore confirming the decree and judgment in O.S.No.250 of 2011, dated 22.07.2011 on the file of the II Additional Munsif Court, Vellore.

For Appellant : M/s.R.T.Sundari

For Respondents : Mr.P.Mani



S.A.No.924 of 2013

JUDGMENT

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The present Second Appeal arises out of the judgment and decree in A.S.No.91 of 2011 dated 12.04.2013 on the file of the Subordinate Court at Vellore in confirming the judgment and decree of the Court of the II Additional District Munsif at Vellore in O.S.No.250 of 2011, dated 22.07.2011.

2. O.S.No.250 of 2011 was originally filed for the relief of bare injunction with respect to 1 acre 89 cents of the property situated at Maruthavallipalayam Village, Pallikonda S.R.O, Vellore Taluk and District with respect to Survey No.304/1B.

3. The case of the plaintiff is that the suit schedule mentioned property belongs to two sisters namely Gori Bibi, W/o. S.K.Hussain Sahib and Begum, W/o. Ameer Bai. The plaintiff pleaded that in the year 1960, Begum had sold her half share to the original plaintiff Govindarajan by way of an unregistered sale deed. It was further pleaded that, the other sister Gori sold the property by way of a registered document on 12.03.1980 in favour of the plaintiff. He pleaded that he had taken possession of the property



S.A.No.924 of 2013

immediately after the sale that was made by Begum. According to him, the defendants, who are the daughters of Begum, knowing that their mother had not executed a registered sale deed, wanted to interfere with the possession and enjoyment of the plaintiff and tried to trespass into the property. Hence, he filed the suit. Pending the suit, the plaintiff Govindarajan had passed away on 30.05.2004. He had executed a will in favour of his nephew, the 2nd plaintiff/Velu on 09.01.2004. On the strength of the “will”, Velu came on record to continue the proceedings, after the death of the original plaintiff.

4. On service of summons, the defendants entered appearance and pleaded that the property belongs to one Afisa Bibi, W/o. Abdul Gaffoor Sahib. The said property was gifted by Kathija Bibi in favour of Afisa Bibi. After the property was settled, the said Afisa Bibi took possession and was enjoying the property. Afisa Bibi had only one daughter by name Bibijohn and did not have any legal heirs. Bibijohn had five daughters namely Saji tha bi, Jayathun bi, Gori bi, Begum bi and Vasira bi. After the death of Bibijohn, the five daughters orally partitioned the property into five equal shares. So according to them, the property which originally belonged to Bibijohn was divided and enjoyed by the five persons set forth above.



S.A.No.924 of 2013

WEB COPY

5. It is the specific stand of the defendants that Begum did not sell her half share to the plaintiff and also that Gori bi did not sell the property in favour of the plaintiff. They therefore, sought for dismissal of the suit. Since the title of the plaintiff was denied, he sought for amendment of the plaint from the suit for bare injunction to the suit for declaration of title and for permanent injunction. The said application for amendment in I.A.No.230 of 2008 was allowed on 04.04.2008 and the suit was converted into one for declaration of title and for injunction.

6. On the basis of these pleadings, the Trial Court framed the following issues :

“1. Whether the plaintiff is entitled for permanent injunction against the defendants ?

2. Whether the registered sale deed, dated 12.03.1980 is true and valid ?

3. To what relief the plaintiff is entitled ?



S.A.No.924 of 2013

In view of the subsequent amendments to the plaint, the following additional issue was framed on 20.07.2011.

1. Whether the plaintiff is entitled for declaration as sought for ?”

7. On the side of the plaintiff, he examined himself and three other witnesses and marked Ex.A1 to Ex.A14. On the side of the defendants, 2nd defendant's husband entered the witness box and marked Ex.B1 to Ex.B6.

8. On consideration of the oral and documentary evidence placed before the Trial Court, the learned Judge came to a conclusion that the plaintiff has not proved the title to the property and therefore, dismissed the suit. Aggrieved by the same, the 2nd plaintiff preferred an appeal in A.S.No.91 of 2011 before the Subordinate Court at Vellore. The said appeal was dismissed by the learned Appellate Judge on 12.04.2013.

9. This Second Appeal was not admitted but notice regarding admission was ordered on 23.01.2014. Notice was served and Mr.P.Mani, learned counsel has entered appearance for the respondents.



S.A.No.924 of 2013

10. I heard M/s.R.T.Sundari, learned counsel for the appellant and Mr.P.Mani for the respondents. I have gone through the records, in particular, the judgment of the Courts below.

11. The perusal of the record shows that Govindarajan's claim was that, he purchased half share from Begum in the year 1960 but did not register the document. He further pleaded that patta had been granted in his favour. Insofar as the share, which had been purchased from Gori is concerned, it is evidenced by Ex.A2. I have gone through the document in Ex.A2. Ex.A2 does not stand in the name of Govindarajan but it has been a purchase made by the 2nd plaintiff's mother/Ramajayam. For the property purchased by Ramajayam, a suit for declaration cannot be presented by Govindarajan for the mere fact that he was living with his brother's family.

12. I have to point out that Govindarajan is the brother of Pandari, who was the husband of Ramajayam. By the mere fact that the family of Pandari and Govindarajan were living together, the purchase made by Ramajayam will not give a right to Govindarajan to file a suit for declaration of title.



S.A.No.924 of 2013

13. M/s.R.T.Sundari points out that insofar as Govindarajan is concerned, he was unmarried and therefore, did not have any issues and had left behind a “will” by which Velu had become the owner of the property. Accepting the “will” to be true, according to M/s.R.T.Sundari, today Velu is the owner of the property and therefore, he has an independent right with respect to the property purchased by his mother from Gori under Ex.A3. This argument is a tantalising one but does not stand a close scrutiny.

14. Velu has been impleaded in this suit as the legal representative of Govindarajan. A legal representative cannot make a better claim in a suit than what had been originally claimed by the plaintiff. Therefore, insofar as the property that is covered under Ex.A2, I have to come to the conclusion that Govindarajan is not the owner and therefore, his legal representative is not entitled to stake a claim to the property.

15. With respect to the shares that were said to have been purchased from Begum, it is admittedly an unregistered sale deed. No title can pass under an unregistered sale deed by virtue of Section 17 of the Registration Act. Therefore, I am not in a position to grant declaration of title insofar as



S.A.No.924 of 2013

the alleged purchase that said to have been made by Govindarajan from Begum.

16. When both the documents went against him, M/s.R.T.Sundari would argue that the plaintiff would prove the title by adverse possession. Apart from the revenue document that has been filed, there has been no other documents to prove that the plaintiff was in open, hostile and continuous possession of the property. Further more, this is a suit based on declaration of title on the basis of documents and the plea of adverse possession was taken in addition thereto. If the plaintiff is in possession of the property, adverse to that of the defendants, it is always open to them to file a suit for declaration of the title by prescription and that plea cannot be taken in this suit.

17. Therefore, leaving it open to the 2nd plaintiff to take a claim to the property as the legal heir of Ramajayam and also if permissible by law to file a suit for declaration of title by prescription, I have to come to the conclusion that the plaintiff has not proved title by virtue of the purchase from Begum or title by virtue of the purchase from Ramajayam.



S.A.No.924 of 2013

WEB COPY

18. In fine, I do not find any error or illegality or perversity in the judgments of the Courts below. The judgment and decree of the Subordinate Court at Vellore in A.S.No.91 of 2011, dated 12.04.2013 in confirming the judgment and decree of the II Additional Munsif Court at Vellore in O.S.No.250 of 2011, dated 22.07.2011 stands confirmed.

19. With the aforesaid liberty, this Second Appeal stands dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

20.02.2024

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1.The Subordinate Court,
Vellore

2.The II Additional Munsif Court,
Vellore



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S.A.No.924 of 2013

V. LAKSHMINARAYANAN, J.

mkn2

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