



S.A.No.735 of 2019
& C.M.P. No.14042 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.735 of 2019

and

C.M.P. No.14042 of 2019

K. Ramu

...Appellant

Vs.

Selvamani

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.02.2018 passed in A.S. No.56 of 2017, on the file of the Subordinate Court, Ulundurpet, upholding the decree and judgment dated 17.12.2015 passed in O.S.No.145 of 2009, on the file of the I Additional District Munsif cum Judicial Magistrate Court, Ulundurpet.

For Appellant : Mr.T.R.Sathiya Mohan

For Respondent : Ms. R. Poornima



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JUDGMENT

The appellant is the defendant in the suit in O.S.No.145/2009 on the file of the I Additional District Munsif cum Judicial Magistrate Court, Ulundurpet. The respondent/plaintiff filed the said suit for declaration of her title to the suit property and for a permanent injunction restraining the appellant/defendant from interfering with her peaceful possession and enjoyment of the suit property. The suit property has been described in the plaint as a land in survey number 128/9 of Odaiyanandal village, Thirunavalur Taluk, Cuddalore District, measuring 1/2 cent within the boundaries stated in the plaint schedule.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit property is the self acquired property of one Sundaramoorthy. Sundaramoorthy and his brother Krishnamoorthy partitioned their family properties in the presence of elders in the village during the year 1985. As per the oral partition, one cent of land in survey number 128/9 was partitioned equally between the two brothers.

3.2. The plaintiff purchased 1/2 cent of land (suit property) from Sundaramoorthy through a registered sale deed dated 29.11.1996 (Ex.A1) and ever since the date of purchase the plaintiff has been in possession and enjoyment of the suit property. However the defendant is attempting to trespass into the suit property and one such attempt was made on 15.04.2009. The defendant is also attempting to alienate the property in favour of third parties. Hence the suit.

4.The suit was resisted by the defendant on the following grounds:



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- i. The entire one cent of land in survey number 128/9 was allotted to the share of Krishnamoorthy. Sundaramoorthy was given some other property.
- ii. Krishnamoorthy sold his share of one cent of land in survey number 128/9 to Poongol Ammal through a registered sale deed dated 19.06.1991 (Ex.B1), who in turn sold the same to the defendant through a registered sale deed dated 28.09.1996 (Ex.B2) along with another one cent of land belonging to her. Thus the defendant is in possession and enjoyment of two cents of land in survey number 128/9 and the plaintiff cannot claim any right over the suit property. He therefore, prayed for dismissal of the suit .

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is the actual purchaser as per the alleged sale deed dated 29.11.1996?"*
- ii. *Whether the plaintiff is in possession and enjoyment of the suit*



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iii. Whether the defendant is enjoying the suit property for more than twenty years as alleged in the written statement?

iv. Whether the plaintiff is entitled for the relief as prayed for?

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A6. The defendant examined himself and one another witness and marked Ex.B1 to Ex.B4.

7. The learned trial court judge, after analysing the oral and documentary evidence on record, decreed the suit in favour of the plaintiff, vide her decree and judgment dated 17.12.2015, on the following grounds:-

- i. There is no dispute that one cent of land in survey number 128/9 of Odaiyanandal village, Thirunavalur Taluk, Cuddalore District, originally belonged to Govindasamy.
- ii. It is not also disputed that Sundaramoorthy and Krishnamoorthy,



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iii. Though the defendant had contended that the entire one cent of land was allotted to the share of Krishnamoorthy and that Sundaramoorthy was given some other property, he had not proved the same.

iv. The plaintiff has established her title and possession over the suit property by adducing acceptable evidence.

8. Aggrieved over the decree and judgment passed by the trial court, the defendant filed an appeal in A.S.No.56/2017, before the Subordinate Court, Ulundurpet. The learned Subordinate Judge, Ulundurpet, upheld the findings recorded by the trial court vide his decree and judgment dated 06.02.2018, as against which the present second appeal is filed.

9. The second appeal was admitted by this Court on the following substantial question of law:



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"1. Whether in a suit for declaration of title and for consequential injunction, does not the initial burden of proof lie on the plaintiff?

2. In keeping with the initial burden, is not the plaintiff bound to prove her case by positive evidence on her side, rather than by reliance on the case of the defendant?

3. Whether both the courts below failed to hold that the burden of proof lies only on the plaintiff and not on the defendant?

4. Whether both the courts below are right in holding that the defendant has failed to prove his case that only Mr.Krisnnamoorthy is the original owner of the suit schedule property?"

10. Heard Mr.T.R.Sathiya Mohan, learned counsel appearing for the appellant Ms. R. Poornima, learned counsel for the respondent.



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11. The suit property is 1/2 cent of land in survey number 128/9 of Odaiyanandal village, Thirunavalur Taluk, Cuddalore District. It is admitted that one cent of land in survey No.128/9 originally belonged to Govindasamy. Sundaramoorthy and Krishnamoorthy, who are the sons of Govindasamy, partitioned their family property i.e. one cent of land in survey number 128/9, equally and according to the plaintiff 1/2 cent of land was allotted to the share of Sundaramoorthy. *Per contra*, the contention of the defendant is that Krishnamoorthy was given the entire one cent of land and that Sundaramoorthy was given some other family property. As rightly observed by both the courts below, the defendant has not proved that the entire one cent of land was allotted to the share of Krishnamoorthy. The defendant has not also examined his vendor. Moreover, the observations of both the courts below are based on facts and evidence. The plaintiff had also obtained patta (Ex.A3) in respect of the suit property. The documents adduced on the side of the defendant show that the defendant is not in possession of one cent of land in survey number 128/9. Thus the plaintiff had proved her title and possession over the suit property and both the courts below concurrently



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held that the plaintiff was entitled to a decree as prayed for by her and the substantial questions of law are answered accordingly.

12. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 06.02.2018 passed in A.S. No.56 of 2017, on the file of the Subordinate Court, Ulundurpet, upholding the decree and judgment dated 17.12.2015 passed in O.S.No.145 of 2009, on the file of the I Additional District Munsif cum Judicial Magistrate Court, Ulundurpet, are upheld.

02.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Court, Ulundurpet.
2. The I Additional District Munsif cum Judicial Magistrate Court, Ulundurpet
3. The Section Officer, VR Section, High Court, Madras.

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