



S.A.No.466 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.466 of 2021

B.Vasanth

... Appellant

-Vs-

1.G.Balasubramanian
2.P.B.Engineering College,
Represented by its Secretary,
Mr.Ramanan,
No.3/117, Bramin Street,
Karambakkam Village,
Porur Post, Chennai-600 116.

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 14.10.2020 made in A.S.No.38 of 2016 on the file of the Subordinate Court, Poonamallee, by confirming the judgement and decree dated 05.02.2016 made in O.S.No.75 of 2008 on the file of the Principal District Munsif Court, Poonamallee.

For appellant

: Ms.Rukmani,
for Mr.P.B.Ramanujam



S.A.No.466 of 2021

WEB COPY

JUDGMENT

The first defendant is the appellant before this Court challenging the concurrent judgment and decree passed against him by both the Courts below.

2. For the ease of understanding, the parties are referred to in the same ranking as before the Trial Court and the facts which have culminated in the filing of this second appeal are set out hereinbelow.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.75 of 2008 on the file of the Principal District Munsif Court, Poonamallee, seeking the relief of declaration of title and for a consequential order of injunction. The suit was filed in respect of a total extent of 0.19 cents which is comprised in two survey nos *viz.*, S.No.245/6A (0.15 cents) and S.No.245/6B (0.04 cents), in Sembarambakkam



S.A.No.466 of 2021

Village, within the following boundaries:

on the East by Road;

on the West by S.No.245/19A site owned by Ponnammal and
S.No.245/19B site owned by Kanniammal;

on the North by S.No.245/17 site owned by
Sachidhanandham; and

on the South by S.No.259.

2.2. It is the case of the plaintiff that this property was originally possessed and owned by his grandfather Munusamy. In an oral partition that took place between the said Munusamy and his brothers' wives, the suit property was allotted to the share of the said Munusamy and this oral partition was reduced into writing as partition koor chit dated 19.06.1967, in which, the suit property was described as B schedule and allotted to Munusamy.

2.3. After the death of Munusamy, the suit property



S.A.No.466 of 2021

WEB COPY

devolved on his wife Lakshmiammal and his sons viz., Ganesan (the plaintiff's father) and Janakiraman. The patta stood in the name of Lakshmiammal. After Lakshmiammal passed away, the brother had partitioned the property orally and the suit property was allotted to Janakiraman (the plaintiff's uncle). The said Janakiraman in the sound and disposing state of mind, had executed a registered Will dated 25.06.1998, bequeathing the suit property to the plaintiff's brother, G.Baskar. The said Janakiraman died on 20.01.2000 and the Will came into effect. Janakiraman's wife Ranganayagiammal pre-deceased him on 06.10.1993 and they had no issues. The plaintiff's brother had got the revenue records transferred in his name and he was in possession and enjoyment of the property.

2.4. While so, the said Baskar had executed a registered settlement deed dated 09.10.2006 settling the property on the plaintiff's mother G.Lalitha and put her in possession and enjoyment of the property. Thereafter, the said Lalitha had



S.A.No.466 of 2021

WEB COPY

executed a settlement deed dated 25.10.2006 settling the property on the plaintiff. The plaintiff has been in possession and enjoyment of the same ever since.

2.5. The first defendant who is doing real estate business and a stranger to the suit property, wanted to purchase the property and had entered into an agreement to purchase the properties surrounding the suit property. He had requested the plaintiff to sell the property to him. However, the plaintiff was not willing to do so. Therefore, on 27.02.2008, the first defendant attempted to trespass into the property and the plaintiff, on hearing the same, rushed to the spot and prevented the first defendant. The plaintiff would submit that the first defendant is staying very close to the suit property, whereas, he stays away from the property. Therefore, the plaintiff has originally filed the suit for bare injunction against the first defendant. However, pending the suit, the plaintiff came to learn that the second defendant had purchased the property from



S.A.No.466 of 2021

WEB COPY

the first defendant and therefore, he was impleaded as the second defendant in the suit.

2.6. On 28.01.2015, the plaintiff came to know that the Village 'A' register stands in the name of the vendor of the first defendant. The plaintiff would submit that the vendor's land is situate in Paimash No.425 which does not correlate to the suit survey number. Therefore, the plaintiff included the relief of declaration of title.

2.7. The first defendant, on entering appearance, had filed a written statement stating that he had not claimed any right over the second item of the suit property and it was only the first item of the suit property, over which, he claims the right on the basis of the sale deed dated 20.03.2007 executed by one Parvathy Ammal in his favour. The first defendant would submit that he had purchased the property and the property was bounded:-



WEB COPY



S.A.No.466 of 2021

on the North by Thankavelu Naicker land,
on the South by Kanniammal land;
on the East by land of Babu; and
on the West by Elumalai.

2.8. The first defendant would deny that the plaintiff and his predecessors-in-title had been in possession and enjoyment of the suit property and submit that the plaintiff was never in possession of the same. Therefore, the suit for bare injunction, without seeking a relief of declaration, is not maintainable and is liable to be dismissed.

2.9. After the amendment of the plaint, the first defendant had filed an additional written statement *inter alia* contending that the statement of the plaintiff that he had known that the A- Register Extract stands in the name of the first defendant's vendor only on 28.01.2015, is totally false. The vendors of the first defendant



S.A.No.466 of 2021

WEB COPY

owned 0.15 cents in S.No.245/6A and it did not matter which paimash number it originally bore. He would further submit that the suit for declaration and injunction was barred by limitation since the plaintiff was not in possession of 0.15 cents at any point in time.

TRIAL COURT:

3. The Trial Court had framed the issues and additional issues. The plaintiff had examined himself as P.W.1 and one Balachandran (Assistant in the Tahsildar Office, Poonamallee) as P.W.2 and marked Exs.A1 to A14. The first defendant had examined himself as D.W.1 and one Y.Sivarama Prasad as D.W.2 and marked Exs.B1 to B8. Through a 3rd party witness, Ex.X1 was marked.

4. The Trial Court, on considering the evidence on record, decreed the suit as prayed for.



S.A.No.466 of 2021

WEB COPY

LOWER APPELLATE COURT:

5. Challenging the same, the first defendant had filed an appeal in A.S.No.38 of 2016 on the file of the Subordinate Court, Poonamallee.

6. The learned Judge, confirmed the findings of the Trial Court and dismissed the appeal.

7. Challenging the same, the first defendant is before this Court.

8. Heard the learned counsel appearing for the appellant and perused the materials available on record.

DISCUSSION:



S.A.No.466 of 2021

WEB COPY

9. The plaintiff has filed a suit in respect of two items of the property and with reference to the second item of the property viz., 0.04 cents of land comprised in S.No.245/6B, there was no contest and contest was only with reference to 0.15 cents comprised in S.No.245/6A. The plaintiff, apart from filing koor chit, Will, etc., has also filed the patta standing in the name of Lakshmiammal which was marked as Ex.A4 before the Trial Court and Ex.A5 – patta standing in the name of his brother G.Baskar. The said G.Baskar appears to be in possession and enjoyment of the property after the Will had come into effect.

10. The first defendant, on the other hand, would submit that he is the owner of the first item of the suit property which he had purchased under the sale deed dated 20.03.2007 from one Parvathy Ammal. He had purchased 0.14 cents in S.No.245/19A and 0.18 cents in S.No.245/5. The first defendant had marked Ex.B1 which is the sale deed executed by Parvathy Ammal and two



S.A.No.466 of 2021

WEB COPY

others through their power of attorney agent N.S.Babu on 20.03.2007. The power of attorney authorising the said Babu to sell the property has been marked as Ex.B4. In Ex.B4, the property which is the subject matter of the sale has been described as Paimash Nos.450/B and 450/C.

11. The Courts below have, on the basis of the evidence, held that the Paimash Nos.450/B and 450/C do not correlate to S.No.245/6A, but, correlate to S.No.195 which is clear from a perusal of Ex.A13 – certified copy of the land survey and settlement register. Therefore, the contention of the first defendant that he is the owner of the first item of the suit property on the basis of Ex.B1, cannot be countenanced.

12. Further, the first defendant had conveyed the suit property to the second defendant. The second defendant has, however, not chosen to challenge the judgment and decree of the



S.A.No.466 of 2021

WEB COPY

Courts below. Therefore, both the Courts below, taking into account the documents submitted by the plaintiff which clearly show that the first item of the suit property belongs to the plaintiff and his predecessors-in-title have rightly come to the conclusion that the plaintiff is entitled to declare his title to the suit property.

Accordingly, this second appeal stands dismissed as the appellant has not made out any substantial question of law. No costs.

06.03.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

1.The Subordinate Judge, Poonamallee.



S.A.No.466 of 2021

WEB COPY

2.The Principal District Munsif, Poonamallee.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

ssa

S.A.No.466 of 2021



WEB COPY



S.A.No.466 of 2021

06.03.2024