



S.A.No.77 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.77 of 2024
and
C.M.P.No.2071 of 2024

N.Chandran(Deceased)

1. C.Parameshwari
2. C.Jagadesh
3. C.Jayaprakash

... Appellants

Vs.

1. M.Duraisamy
2. D.Tamilalagan
3. D.Asaithambi
4. D.Alagarasan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 12.11.2019 in A.S.No.14 of 2019 on the file of the Principal Subordinate Court, Salem, confirming the judgment and decree dated 12.10.2018 in O.S.No.784 of 2012 on the file of the II Additional District Munsif Court, Salem.

For appellants : Mr.B.Nedunzhelian

For respondents 2 to 4 : Mr.S.Gopinath



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JUDGMENT

The legal heirs of the sole plaintiff who has concurrently lost before the Courts below, are the appellants before this Court.

2. The facts of the case are set out hereinbelow briefly with the parties referred to as the plaintiff and the defendants respectively. The legal heirs of the deceased sole plaintiff will be collectively referred to as the plaintiff.

FACTS OF THE CASE:

2.1. The suit in O.S.No.784 of 2012 is filed by the plaintiff on the file of the II Additional District Munsif Court, Salem, for the reliefs of declaration of his title in respect of the suit properties and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule properties and also to declare the partition deed dated 25.07.2011 executed



amongst the defendants with reference to the suit schedule properties as null and void.

2.2. It is the case of the plaintiff that the properties belonged to his paternal grandfather viz., Venkatachala Gounder. The said Venkatachala Gounder, under a settlement deed dated 21.07.1978, had settled the properties on his son viz., Thuppati @ Natesan, who is the father of the plaintiff. 10 years prior to the institution of the suit, the said Thuppati @ Natesan passed away. He died leaving behind his wife Pachiyammal, daughter Sathiya and son Chandran (the plaintiff herein) as his legal heirs.

2.3. On 18.09.2008, the plaintiff's mother and sister had executed a release deed in favour of the plaintiff, releasing their shares in the suit properties. Therefore, the plaintiff had become the absolute owner of the properties.

2.4. On 25.07.2011, the defendants have executed a partition



amongst themselves wherein they have clandestinely included the suit properties, over which, they have no right, title or interest. On the basis of this partition, the defendants are claiming right to the suit properties. The plaintiff's mother Pachiyammal had requested the Tahsildar, Salem, to measure the suit properties and fix the boundaries with the help of the Firka Surveyor. On 14.03.2012, the Taluk Deputy Inspector of Survey has clearly given an certificate that the properties belonging to the plaintiff (suit properties) have been wrongly entered in the name of the defendants and consequently, wrongly included in the partition deed. However, the defendants have not come forward to cancel the wrong inclusion made in the partition. Therefore, the plaintiff has come forward with the suit in question.

2.5. The third defendant has filed a written statement which was adopted by the other defendants, in which, the defendants had denied the settlement deed dated 21.07.1978. The defendants would contend that Venkatachala Gounder had another son *viz.*, Sundaram who was born to him through his first wife. Sundaram had married Bakkiyam



who was originally impleaded as the second defendant and whose name had been struck off by an order dated 14.10.2015 in I.A.No.672 of 2015. Bakkiyam and Sundaram had two sons viz., Madeswaran and Paul Raj.

2.6. The defendants would submit that they are not aware of the alleged released deed executed in favour of the first plaintiff by his mother and sister. The defendants would submit that they had entered into the partition deed dated 25.07.2011 in respect of the properties purchased by them under sale deeds dated 14.06.1963, 01.06.1964 and 25.11.1970. Under these three sale deeds, the first defendant had purchased an extent of 2.49 acres of land and from the date of purchase of the properties, the defendants were in possession and enjoyment of the same.

2.7. The defendants would further contend that the statement that they were claiming possession over the suit properties is totally false since they were already in possession of the suit properties. The



defendants would submit that they are cultivating the same and have raised Cholan crops in the suit properties measuring 6.5 cents in S.No.57/2. They would contend that the plaintiff has no right to the properties as he was never in possession and enjoyment of the same and therefore, prayed for the dismissal of the suit in question.

TRIAL COURT:

3. The Trial Court had framed the following issues and additional issues.

“ISSUES:

1. Whether the plaintiff is entitled to get declaration against the document no.2966/11 dated 25.07.2011 as null and void?

2. Whether the plaintiff is entitled to get permanent injunction over the suit properties?

3. What are the other relief the plaintiff is entitled for?

ADDITIONAL ISSUES:

1. Whether the plaintiff is entitled to the relief of declaration of title as prayed for or not?

2. Whether the suit is properly valued and the court fee



paid by the plaintiff is correct or not?”

4. The plaintiff had entered the box as P.W.1 and marked four documents and one Chandran was examined as P.W.2. The defendants have neither entered the box nor submitted any documentary evidence.

5. The Trial Court dismissed the suit, against which, the plaintiff has filed an appeal in A.S.No.14 of 2019 on the file of the Principal Subordinate Court, Salem.

LOWER APPELLATE COURT:

6. The Lower Appellate Court held that under Ex.A1 - settlement deed executed by Venkatachala Gounder in favour of his son viz., Thuppati @ Natesan, the properties that he settled were on the western side of the properties comprised in S.No.157/2 measuring 50 cents within specified boundaries which is evidenced by Ex.A1. The learned Judge has held that the boundaries of the properties given in the plaint and the boundaries stated in Ex.A1 did not correlate.



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7. The Lower Appellate Court has also held that despite the plaintiff claiming that the first item of the suit properties was subdivided as S.No.152/2B, no documentary evidence to substantiate the same was filed. Ex.A4 which is the patta does not contain any details about the re-survey and that apart, the plaintiff has not sought to examine any of the Revenue Officials to substantiate his case. The Lower Appellate Court has also found fault with the plaintiff for not filing any application for appointing an Advocate Commissioner to inspect the properties and submit a report.

8. The Lower Appellate Court also took note of the fact that the settlement deed Ex.A1 makes reference to the sale deed dated 14.06.1963, under which, the said Venkatachala Gounder had purchased the properties. However, this document has not been produced, more particularly, when the defendants were challenging the right of the plaintiff to the said properties. Ultimately, the Lower Appellate Court dismissed the appeal.



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9. Aggrieved by the same, the plaintiff is before this Court.

The defendant who has not entered the box to give evidence has argued the case in the Courts below and is represented before this Court as well.

10. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

11. The suit is one for permanent injunction and for declaring the partition deed executed by the defendants dated 25.07.2011 as null and void. The Lower Appellate Court, on perusing the description of the properties and the description given in Ex.A1, held that both the properties are different. Further, the plaintiff had produced Ex.A4 which is the patta. No other document has been produced by the plaintiff to prove his right to the first item of the suit properties which has been sub-divided as S.No.157/2B. There is no other document or



revenue record filed to prove the re-classification and sub-division.

Ex.A4 has also not been proved by examining the Revenue Officials who as stated to have granted the said document.

12. The plaintiff has also not chosen to produce the patta, chitta or adangal extracts to show his title or possession. The plaintiff, who has come to the Court for declaring his title to the properties, has not filed the title document *viz.*, sale deed in favour of Venkatachala Gounder which could have helped the Court to appreciate the plaintiffs' claim. The plaintiff has kept away the best evidence. Since one of the reliefs is to set aside the partition deed dated 25.07.2011 executed amongst the defendants on the ground that the defendants have included the properties of the plaintiff in the partition deed, the onus lies upon the plaintiff to prove his title to the suit property, which exercise, the plaintiff has failed to discharge. Therefore, both the Courts below have concurrently held against the plaintiff after considering the documents filed by him. I see no reason to differ with the findings of the Courts below.



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Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Principal Subordinate Judge, Salem.
2. The II Additional District Munsif, Salem.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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